

**FILED**  
Superior Court of California  
County of Los Angeles

**APR 17 2023**

David W. Slayton, Executive Officer/Clerk of Court  
By: N. Navarro, Deputy

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

JORGE AVALOS, individually, and as a  
representative of other aggrieved employees,

Plaintiff,

v.

UNVARNISHED, INC., a California  
Corporation; 600 SPRING, LLC, a  
California Limited Liability Corporation,  
SCOTT GILLEN, an Individual and DOES  
1 through 250, inclusive,

Defendants.

Case No.: 20STCV16951

ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT ON CONDITION

**I. BACKGROUND**

Plaintiff Jorge Avalos sues his former employer, Defendants Unvarnished, Inc.,  
600 Spring, LLC, and Scott Guillen (collectively, "Defendants"), for alleged wage and  
hour violations. Defendants operate a residential real estate development company.

1 Plaintiff seeks to represent a class of Defendants' current and former non-exempt  
2 employees.

3 On April 30, 2020, Plaintiff filed a class action complaint alleging causes of  
4 action for: (1) unpaid overtime and minimum wages (Labor Code §§ 510, 1194, 1198);  
5 (2) non-compliant wage statements (Labor Code §§ 226(a) and 1174); (3) failure to pay  
6 all wages and on a timely basis (Labor Code §§ 201-203); (4) unpaid meal period  
7 premiums (Labor Code §§ 226.7, 512(a)); (5) unpaid rest period premiums (Labor Code  
8 § 226.7); and (6) violation of California Business & Professions Code §§ 17200, et seq.  
9 On July 15, 2021, Plaintiff filed a First Amended Complaint adding a cause of action  
10 for civil penalties under the Private Attorneys General Act (Labor Code §§ 2698, et  
11 seq.) ("PAGA").

12 On July 29, 2021, the parties mediated before Paul Grossman, Esq., and accepted  
13 a mediator's proposal. The parties subsequently finalized the terms of settlement in the  
14 Stipulation of Class Action and PAGA Settlement and Release ("Settlement  
15 Agreement"), a copy of which was filed with the Court on March 4, 2022.

16 On March 21, 2022, the Court issued a "checklist" to the parties pertaining to  
17 deficiencies in the proposed settlement. In response, the parties filed further briefing.  
18 The Court denied preliminary approval, without prejudice, on July 29, 2022. Plaintiff's  
19 motion was refiled October 3, 2022 and heard March 2, 2023. At the request of the  
20 parties the matter was continued to March 20, 2023 and then to April 13, 2022, at which  
21 time the matter stood submitted as to the agreement filed March 21, 2023.

22 For the reasons set forth below, the Court preliminarily grants approval for the  
23 settlement submitted March 21, 2023 and refiled with the inadvertently omitted  
24 signature of the Plaintiff on April 14, 2023, on condition that, at the time of final  
25 approval, counsel provide proof that the LWDA was served no later than May 1, 2023

1 with the settlement filed March 21, 2023. Failure to comply with contingency may  
2 result in denial of final approval.

3  
4 **II. THE TERMS OF THE SETTLEMENT**

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

6 “Class” or “Class Members” includes all current and former hourly or non-  
7 exempt employees who worked at Defendant’s locations in California at any time from  
8 April 30, 2016 until May 31, 2022. (¶1.1)

9 “Class Period” means the period from April 30, 2016 through and including the  
10 May 31, 2022. (¶1.7)

11 “PAGA Members” means all current and former hourly-paid or non-exempt  
12 employees of Defendant who worked at Defendant’s locations in California at any time  
13 from March 13, 2019 to May 31, 2022. (¶1.25)

14 “PAGA Period” means the period from March 13, 2019 through and including  
15 May 31, 2022. (¶1.27)

16 “Settlement Class Members” or “Settlement Class” means all Class Members  
17 who do not submit a valid and timely Request for Exclusion. (¶1.41)

18  
19 **B. THE MONETARY TERMS OF SETTLEMENT**

20 The essential monetary terms are as follows:

21 The Maximum Settlement Amount is \$200,000 (¶1.22). This includes payment of  
22 a PAGA penalty of \$10,000 to be paid 75% to the LWDA (\$7,500) and 25% to the  
23 Aggrieved Employees (\$2,500) (¶1.26).

24 The Net Settlement Amount (“Net”) (\$89,333) is the GSA less:

- 25
- Up to \$66,667 (33 1/3%) for attorney fees (¶1.6);

- Up to **\$17,000** for attorney costs (§1.4);
- Up to **\$10,000** for a service award to the proposed class representative (§1.16); and
- Estimated **\$7,000** for settlement administration costs (§1.39).

- **Employer-side payroll taxes will be paid by Defendants in addition to the Maximum Settlement Amount (§2.6).**

- Assuming the Court approves all maximum requested deductions, approximately \$91,333 will be available for distribution to participating class members.

Assuming full participation, the average settlement share will be approximately \$656.86. ( $\$89,333 \text{ Net} \div 136 \text{ class members} = \$656.86$ ). In addition, each PAGA Member will receive a portion of the PAGA penalty, estimated to be \$51.02 per PAGA Member. ( $\$2,500 \text{ or } 25\% \text{ of } \$10,000 \text{ PAGA penalty} \div 49 \text{ PAGA Members} = \$51.02$ ).

- The agreement does not include a claim requirement.

- The settlement is not reversionary (§1.22).

- Individual Settlement Share Calculation: Each Settlement Class Member's share of the Net Settlement Amount shall be determined as follows: (§3.11.2)

- Total Workweeks = (1 x all Unvarnished, Inc. Employee Classified as "Independent Contractor" Weeks) + (0.7 x all other Unvarnished, Inc. Non-Exempt Employee Weeks)

- Workweek Value = Net Settlement Amount  $\div$  Total Workweeks

- Individual Class Settlement Payment = [(1 x individual Unvarnished Inc. Individuals Classified as "Independent Contractor" Employee Weeks) + (0.7 x Non-Exempt Employees of Unvarnished, Inc. Employee Weeks)] x Workweek Value

1           ○ Compensable Weeks for Defendants employees who were not classified  
2           as “Independent Contractor” shall have 0.7 of the Workweek Value for  
3           Compensable Weeks for non-exempt employees of Unvarnished, Inc.  
4           who did not sign “Independent Contractor” agreements. This reduction in  
5           Workweek Value is represented to be fair because some Unvarnished,  
6           Inc. employees were not required to sign Independent Contractor  
7           agreements and therefore may not have been subjected to the alleged  
8           policies and/or practices that give rise to the regular rate claim, wage  
9           statement claim, and waiting-time penalties claim. (§3.11.2)

10       • Individual PAGA Share Calculation: The PAGA Settlement Payments payable  
11       to each PAGA Member shall be determined as follows: (§3.11.4)

12           ○ Pay Period Value = PAGA Settlement Amount ÷ total Compensable Pay  
13           Periods

14           ○ Individual PAGA Settlement Payment = individual Compensable Pay  
15           Periods x Pay Period Value

16           ○ “Compensable Pay Periods” means all pay periods in which a PAGA  
17           Member performed work for Defendant in California during the PAGA  
18           Period. (§1.10)

19       • **Tax Withholdings:** 33.33% as wages, 66.67% as penalties and interest (§3.11.3).  
20       The PAGA Settlement Payments are considered to be entirely civil penalties and  
21       will be paid without reduction for any taxes or other withholdings and will be  
22       reported on an IRS Form 1099 (if required). (§3.11.4)

23       • **Funding and Distribution of Settlement:** Defendants are required to fully fund  
24       and pay Two Hundred Thousand Dollars (\$200,000.00) of the Maximum  
25       Settlement Amount within twenty (20) calendar days of the Effective Date.

1 (¶3.10) Defendants shall also fund their employer-side payroll taxes at the same  
2 time as they fund the Maximum Settlement Amount. (¶1.22) Class Settlement  
3 Payments and PAGA Settlement Payments shall be mailed by regular First-Class  
4 U.S. Mail to Settlement Class Members' last known mailing address within  
5 thirty (30) calendar days after the Effective Date. (¶3.11.1)

- 6 • **Uncashed Settlement Payment Checks:** If a Settlement check is not cashed or  
7 deposited within one hundred eighty (180) calendar days after the date it is  
8 mailed to a Settlement Class Member, it will be voided. The funds associated  
9 with such voided checks will be transmitted to the Unclaimed Property Fund  
10 maintained by the State Controller's Office in the names of the Settlement Class  
11 Members whose checks are voided. (¶3.9)

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

- 14 • Release As To All Settlement Class Members and PAGA  
15 Members. As of the date Defendant funds the Settlement (as set forth in  
16 Paragraph 3.10) all Settlement Class Members, including Plaintiff, release the  
17 Released Parties from the Released Class Claims and all PAGA Members,  
18 including Plaintiff, release the Released PAGA Claims. **The Settlement**  
19 **Administrator shall include a legend on the Class Settlement Payment check**  
20 **stating: "By cashing this check, I am affirmatively opting into the release of**  
21 **claims in *Jorge Avalos v. Unvarnished, Inc., 600 SPRING, LLC, and Scott***  
22 ***Gillen, now pending in the Superior Court of California for the County of Los***  
23 ***Angeles, Case No. 20STCV16951, and releasing the Released Class Claims***  
24 **described in the Settlement Agreement."** (¶3.1.1)

- 1 • “Released Class Claims” is defined as any and all claims, debts, liabilities,  
2 demands, actions, or causes of action of every nature and description that were  
3 alleged in the First Amended Complaint dated July 15, 2021 (“Complaint”), or  
4 which could have been alleged based on the factual predicates in said Complaint.  
5 The Released Claims include, without limitation, all claims for unpaid wages,  
6 including, but not limited to, failure to pay minimum wages; failure to pay  
7 straight time compensation, overtime compensation double-time compensation,  
8 reporting time compensation, and/or interest; missed, late, short or interrupted  
9 meal and/or rest periods, including any claims for any alleged failure to pay  
10 premiums for missed, late, short or interrupted meal or rest periods, including  
11 any claim for any alleged failure to pay such premiums for missed, late, short or  
12 interrupted meal or rest periods, or to pay such premiums at the regular rate of  
13 compensation, inaccurate or otherwise improper wage statements and/or failure  
14 to keep or maintain accurate record; any claim for unfair business practices  
15 arising out of, arising in connection with, or related to any or all of the  
16 aforementioned claims; any claim for penalties arising out of or related to any or  
17 all of the aforementioned claims, including but not limited to, record-keeping  
18 penalties, wage statement penalties, minimum-wage penalties, and waiting time  
19 penalties; and attorneys’ fees and costs. The Released Claims include all such  
20 claims arising under the California Labor Code, including, but not limited to,  
21 sections 200, 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 223, 225, 225.5,  
22 226, 226.3, 226.7, 226.8, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197,  
23 1197.1, 1198.5, 2750, and 2698 et seq. as to identified Labor Code Section and  
24 2699 et seq.; the applicable Wage Orders of the California Industrial Welfare  
25 Commission as to the facts alleged in the Complaint and all claims that could

1 have been pled based on the alleged facts in said Complaint; California Business  
2 and Professions Code section 17200, et seq.; the California Civil Code, including  
3 but not limited to, section 3287; and California Code of Civil Procedure  
4 section 1021.5. In addition, Class Members who endorse their settlement checks  
5 waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. §  
6 201 et seq. (“FLSA”) arising during the Class Period and reasonably related to  
7 any or all of the aforementioned claims. This release excludes the release of  
8 claims not permitted by law. (§1.33) .

- 9 • “Released PAGA Claims” is defined as all claims for civil penalties under  
10 the Private Attorneys General Act, Cal. Lab. Code § 2698, et seq. (“PAGA”)   
11 that were pled in the Complaint or that could have been pled based on the  
12 facts pled in Complaint, arising during the PAGA Period, including, but not  
13 limited to, failure to pay minimum wages; failure to pay straight time  
14 compensation, overtime compensation double-time compensation, reporting  
15 time compensation, and/or interest; missed, late, short or interrupted meal  
16 and/or rest periods, including any claims for any alleged failure to pay  
17 premiums for missed, late, short or interrupted meal or rest periods, including  
18 any claim for any alleged failure to pay such premiums for missed, late, short  
19 or interrupted meal or rest periods, or to pay such premiums at the regular  
20 rate of compensation, inaccurate or otherwise improper wage statements  
21 and/or failure to keep or maintain accurate record; any claim for unfair  
22 business practices arising out of, arising in connection with, or related to any  
23 or all of the aforementioned claims; any claim for in violation of California  
24 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551,  
25 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5 and



1 Industrial Welfare Commission Wage Order Nos. 2- 2001, 4-2001, and 10-  
2 2001. (§1.34)

- 3
- 4 • “Complaint” means the operative wage-and-hour class and representative action  
5 Plaintiff filed on July 15, 2021, entitled *Jorge Avalos v. Unvarnished, Inc., 600*  
6 *SPRING, LLC, and Scott Gillen*, now pending in the Superior Court of California  
7 for the County of Los Angeles, Case No. 20STCV16951. (§1.19)“LWDA  
8 Letters” means Plaintiff’s March 13, 2020 notice to the Labor and Workforce  
9 Development Agency (“LWDA”) alleging violations of Labor Code sections  
10 201, 202, 203, 204, 510, 558, 226, 226.7, 226.3, 226.8, 510, 512, 1174, 1198.5,  
11 2750.3. (§1.19)
  - 12
  - 13 • “Released Parties” means Unvarnished, Inc., 600 SPRING, LLC, and Scott  
14 Gillen as well as Unvarnished, Inc. and 600 SPRING, LLC’s current and former  
15 parents, subsidiaries, predecessors and successors, and affiliated entities, and  
16 each of their respective owners, officers, directors, managers, supervisors,  
17 partners, shareholders, and agents (including managing agents), and any other  
18 successors, assigns, or legal representatives, including without limitation Scott  
19 Gillen. (§1.35)
  - 20 • The named Plaintiff will also provide a general release and a waiver of the  
21 protections of Cal. Civ. Code §1542. (§3.1.2)
  - 22 • The releases are effective as of the date Defendant funds the Settlement, which is  
23 to occur within twenty (20) calendar days of the Effective Date. (§3.10)
  - 24

25 **D. SETTLEMENT ADMINISTRATION**

- 1 • The proposed Settlement Administrator is Phoenix Class Action Administration  
2 Solutions, which has provided evidence that no counsel are affiliated with it and  
3 that it has adequate procedures in place to safeguard the data and funds to be  
4 entrusted to it. (See Declaration of Michael E. Moore.)
- 5 • Settlement administration costs are estimated to be \$7,000 (¶1.38).
- 6 • Notice: The manner of giving notice is described below.
- 7 • Opt Out/Objection Dates: “Response Deadline” means the date that is forty-five  
8 (45) calendar days after the Settlement Administrator mails the Class Notice to  
9 Class Members and the last date on which Class Members eligible for Class  
10 Settlement Payments only may: (a) postmark or fax a Request for Exclusion to the  
11 Settlement Administrator; (b) postmark or fax a Notice of Objection (as set forth  
12 in Paragraph 3.7) to the Settlement to the Settlement Administrator; or (c)  
13 postmark or fax a Dispute (as set forth in Paragraph 3.5) to the Settlement to the  
14 Settlement Administrator. (¶1.37)
  - 15 ○ A Request for Exclusion shall not apply to eligible Class Members’ (i.e.,  
16 PAGA Members) receipt of a PAGA Settlement Payment and such Class  
17 Members shall remain bound by the Released PAGA Claims regardless of  
18 their Request for Exclusion from the Class Settlement Payment. (¶1.36)
  - 19 ○ The Court will hear from any Class Member who attends the Final  
20 Approval Hearing and asks to speak regardless of whether the Class  
21 Member complied with the Objection procedures in ¶3.7. (¶3.17)
  - 22 ○ If, after the Response Deadline and before the Final Approval Hearing, the  
23 number of individuals who submitted timely and valid Requests for  
24 Exclusion from the Settlement exceeds five percent (5%) of all Class  
25

1 Members, Defendants shall have, in its sole discretion, the option to rescind  
2 this Settlement. (§3.15)

- 3 • Notice of Final Judgment will be posted on the Settlement Administrator’s website  
4 (§3.18).

5  
6 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

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

1 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
2 concerned.”] [internal quotation marks omitted].

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

9 Notwithstanding an initial presumption of fairness, “the court should not give  
10 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
11 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a  
12 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*  
13 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class  
14 members, the court must independently and objectively analyze the evidence and  
15 circumstances before it in order to determine whether the settlement is in the best  
16 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4<sup>th</sup> at 130.  
17 In that determination, the court should consider factors such as “the strength of  
18 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,  
19 the risk of maintaining class action status through trial, the amount offered in  
20 settlement, the extent of discovery completed and stage of the proceedings, the  
21 experience and views of counsel, the presence of a governmental participant, and the  
22 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of  
23 factors is not exclusive and the court is free to engage in a balancing and weighing of  
24 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
25 245.

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

8  
9 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

10  
11 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

13  
14 **1. The settlement was reached through arm’s-length bargaining**

15 On July 29, 2021, the parties mediated before Paul Grossman, Esq., and accepted  
16 a mediator’s proposal to resolve the action, and subsequently finalized the Settlement  
17 Agreement. (Buchsbbaum Decl. filed October 3, 2022. ¶18.)

18  
19 **2. The investigation and discovery were sufficient**

20 Plaintiff’s counsel represents that their investigation included the exchange of  
21 documents and statistical information with Defendants, as well as interviews with  
22 witnesses. (*Id.* at ¶11.) From defense counsel, Plaintiff received class data comprised  
23 of: (1) an Excel spreadsheet containing a list of employees during the Class Period  
24 (with personal information redacted) including dates of employment; (2) the  
25 independent contractor agreements signed by 18 of the 136 employees within the Class

1 Period; (3) sections of the employee handbooks and other documents addressing  
2 Defendants' wage and hour practices; and (4) timesheets and paystubs of Plaintiff and  
3 approximately 60 employees. (*Id.* at ¶12.) Defendants told Plaintiff's counsel that they  
4 could not produce all employee records due to a fire at a facility where some payroll  
5 records were stored, which Plaintiff's counsel confirmed after speaking to a current  
6 employee of Defendant. (*Id.* at ¶¶ 12-13.)

7 Based on the data provided by Defendants and information obtained from  
8 Plaintiff and some of Defendant's ex-employees, Plaintiff's counsel determined: (i) the  
9 approximate average hourly rate of pay for Class Members; (ii) the estimated total  
10 number of former and current employees in the Class Period; (iii) the total number of  
11 Class Members in the PAGA period; and (iv) the total number of pay periods and  
12 workweeks worked by all Class Members during the Class Period. Plaintiff's counsel  
13 also reviewed documents from Plaintiff, including but not limited to a form he signed  
14 when he was hired stating he was an independent contractor, a few forms called a  
15 "Independent Contractors Invoice", and what appeared to be receipts showing how  
16 much he was paid. (*Id.* at ¶16.)

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

### 18 **3. Counsel is experienced in similar litigation**

19  
20 Class Counsel represent that they are experienced in class action litigation,  
21 including wage and hour class actions. (Buchsbaum Decl. ¶6; Declaration of Roger E.  
22 Haag ¶6. It is the Court's observation that Mr. Buchsbaum has considerably more class  
23 action experience than Mr. Hagg but Mr. Hagg also has other relevant experience as an  
24 employment lawyer and has demonstrated that he and his client sufficiently investigated  
25 the facts of the case so as to value it and represent the proposed class.

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

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

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

24                  Class Counsel estimated Defendant’s maximum exposure at \$2,068,896, based on  
25 the following analysis:

Violation	Maximum Exposure
Misclassification of Employees	\$160,000.00
Meal Break Violations	\$594,048.00
Rest Break Violations	\$594,048.00
Wage Statement Violations	\$88,000.00
Waiting Time Penalties	\$378,000.00
PAGA Penalties	\$254,800.00
<b>Total</b>	<b>\$2,068,896.00</b>

(Buchsbaum Decl. ¶¶ 22-31.)

The maximum exposure includes penalties that might or might not be awarded at trial and meal and rest break violations that may not be susceptible to class certification on a contested basis or proof as to damages, given the state of Defendant's records. Class Counsel obtained a gross settlement valued at \$200,000. This is approximately 9.7% of Defendant's maximum exposure and in excess of the estimated exposure on the claims for misclassification.

## 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 successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."] Further, the settlement was negotiated and



1 endorsed by Class Counsel who, as indicated above, are experienced in employment  
2 litigation and class action litigation. Based upon their investigation and analysis, the  
3 attorneys representing Plaintiff and the class are of the opinion that this settlement is fair,  
4 reasonable, and adequate. (Buchsbaum Decl. ¶32; Haag Dec. ¶¶ 21-34.)

5 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,  
6 which was sent a copy of the Settlement Agreement on March 4, 2022 but does not  
7 appear to have been served with the current version. (Haag Decl., Exhibit A.) Any  
8 objection by it will be considered at the final fairness hearing. Plaintiff must serve the  
9 LWDA no later than May 1, 2023.

### 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 he was represented  
16 by counsel in its negotiation.

### 17 18 **4. Conclusion**

19 Class Counsel estimated Defendant's maximum exposure at \$2,068,896. Class  
20 Counsel obtained a gross settlement valued at \$200,000. This is approximately 9.7% of  
21 Defendant's maximum exposure, which, given the uncertain outcomes, including the  
22 potential that the class might not be certified, that liability is a contested issue, and that  
23 the full amount of penalties would not necessarily be assessed even if the class is certified  
24 and liability found, the settlement is within the "ballpark of reasonableness."

25 //

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

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

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

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

10                  There are 136 putative Class Members. (Haag Decl. ¶13.) Numerosity is  
11 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25  
12 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*  
13 *class action is liberally construed,*” and citing examples wherein classes of as little as  
14 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*  
15 (1972) 28 Cal.App.3d 1017, were upheld).

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

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

22                  The class is defined above. Class Members are ascertainable through  
23 Defendants’ records. (Haag Decl. ¶13.)

24                  //

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 Defendants’  
7 policies and practices apply class-wide, and Defendants’ liability can be determined by  
8 facts common to all members of the class. (Memo ISO Prelim at 26:8-13.)

9                   As to typicality, Plaintiff contends that his claims are typical of the proposed  
10 Settlement Class because they arise from the same factual basis and are based on the  
11 same legal theories applicable to the other Class Members, because Plaintiff worked for  
12 Defendants during the Class Period. (Memo ISO Prelim at 26:13-15.)

13                   As to adequacy, Plaintiff represents that he is aware of the obligations of being a  
14 class representative, does not have a conflict with the class, and has participated in the  
15 litigation. (Declaration of Jorge Avalos ¶¶ 12-16.) As previously stated, Class Counsel  
16 have experience in class action litigation.

17  
18                   **4. Substantial Benefits Exist**

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

21  
22                   **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS  
23 OF DUE PROCESS**

24                   The purpose of notice is to provide due process to absent class members. A practical  
25 approach is required, in which the circumstances of the case determine what forms of

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

7 **1. Method of class notice**

8 No more than thirty (30) business days after the entry of the Preliminary  
9 Approval Order, Defendants shall provide the Settlement Administrator with the Class  
10 Information for purposes of administering the Settlement. (¶3.3.2) Because Social  
11 Security numbers are included in the Class Information, the Settlement Administrator  
12 shall maintain the Class Information in confidence, it shall be transmitted in password-  
13 protected file(s), and access shall be limited to those with a need to use the Class  
14 Information as part of the administration of the Settlement. (¶1.5)

15 **No more than fourteen (14) calendar days after receiving the Class Information**  
16 **from Defendants as provided,** the Settlement Administrator shall mail copies of the  
17 Class Notice to all Class Members and PAGA Members by First-Class U.S. Mail. Prior  
18 to mailing the Class Notices, the Settlement Administrator will use the United States  
19 Postal Service National Change of Address Database to locate updated addresses to  
20 ensure that the Class Notice is sent to all Class Members and PAGA Members at the  
21 addresses most likely to result in receipt of the Class Notice. It will be conclusively  
22 presumed that, if an envelope so mailed has not been returned by the Response  
23 Deadline, the Class Member and/or PAGA Member received the Class Notice. (¶3.3.4)

24 Any Class Notice that is returned to the Settlement Administrator as non-  
25 delivered on or before the Response Deadline shall be re-mailed to the forwarding

1 address affixed thereto, if any. If no forwarding address is provided, the Settlement  
2 Administrator shall make any further reasonable efforts to obtain an updated mailing  
3 address within two (2) business days of the date of the return of the Class Notice,  
4 including, without limitation, conducting one skip trace search. If an updated mailing  
5 address is identified, the Settlement Administrator shall re-send the Class Notice to the  
6 Class Member and/or PAGA Member. Class Members to whom a Class Notice is re-  
7 sent after having been returned undeliverable to the Settlement Administrator shall have  
8 fourteen (14) calendar days thereafter or until the Response Deadline has expired,  
9 whichever is later, to mail or fax the Request for Exclusion, Notice of Objection, or  
10 Dispute. If a Class Member's Class Notice is returned to the Settlement Administrator  
11 more than once as non-deliverable, then the Settlement Administrator shall not be  
12 required to undertake any additional re-mailing of the returned Class Notice. (§3.3.5)

### 13 **2. Content of class notice.**

14 A copy of the proposed class notice is attached to the Settlement Agreement as  
15 Exhibit A. The notice includes information such as: a summary of the litigation; the  
16 nature of the settlement; the terms of the settlement agreement; the maximum  
17 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,  
18 the enhancement award, and claims administration costs); the procedures and deadlines  
19 for participating in, opting out of, or objecting to, the settlement; the consequences of  
20 participating in, opting out of, or objecting to, the settlement; and the date, time, and  
21 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be  
22 given in both English and Spanish (§3.4).

### 23 **3. Settlement Administration Costs**

24 Settlement administration costs are estimated at **\$7,000**, including the cost of  
25 notice (§1.38). Prior to the time of the final fairness hearing, the settlement

1 administrator must submit a declaration attesting to the total costs incurred and  
2 anticipated to be incurred to finalize the settlement for approval by the Court.

3  
4 **E. ATTORNEY FEES AND COSTS**

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

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

21 The question of class counsel’s entitlement to **\$66,667** (33 1/3%) in attorney fees  
22 will be addressed at the final fairness hearing when class counsel brings a noticed  
23 motion for attorney fees. If a lodestar analysis is requested class counsel must provide  
24 the court with current market tested hourly rate information and billing information so  
25

1 that it can properly apply the lodestar method and must indicate what multiplier (if  
2 applicable) is being sought.

3 **Fee Split: Class Counsel, Buchsbaum & Haag, LLP and Gateway Pacific Law**  
4 **Group, PC are to divide attorney fees as 50% to each firm.** Plaintiff consented to this  
5 agreement in writing. (Haag Decl., Exhibit B.)

6 Class counsel should also be prepared to justify the costs sought (capped at  
7 **\$17,000**) by detailing how they were incurred.

#### 8 9 **F. SERVICE AWARDS**

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

19 In connection with the final fairness hearing, the named Plaintiff may submit a  
20 further declaration quantifying, if possible, the time spent on this action and any  
21 financial risk he undertook in bringing it. *Id.* at 806.

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

24 //

25 //

1 **V. CONCLUSION AND ORDER**

2 For the reasons set forth above, and condition upon Plaintiff serving the LWDA  
3 with the current version of the settlement agreement by May 1, 2023 and providing  
4 proof of service at the final approval hearing, the Court hereby:

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

7 (2) Grants conditional class certification;

8 (3) Appoints Jorge Avalos as Class Representative;

9 (4) Appoints Law Offices of Buchsbaum & Haag, LLP and Gateway Pacific  
10 Law Group, PC as Class Counsel;

11 (5) Appoints Phoenix Class Action Administration Solutions as Settlement  
12 Administrator;

13 (6) Approves the proposed notice plan; and

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

- 15 • Deadline for Defendant to provide class list to settlement administrator: May 17,  
16 2023 (within 30 business days from preliminary approval)
  - 17 • Deadline for settlement administrator to mail notices: May 31, 2023 (within 14  
18 calendar days from receipt of class list)
  - 19 • Deadline for class members to opt out: July 17, 2023 (45 calendar days from the  
20 initial mailing of the Notice Packets)
  - 21 • Deadline for class members to object: July 17, 2023 (45 calendar days from the  
22 initial mailing of the Notice Packets)
- 23  
24  
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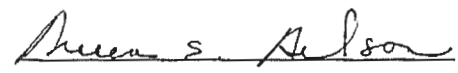


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- Deadline for class counsel to file motion for final approval: July 31, 2023 (16 court days prior to final fairness hearing)
- Final fairness hearing: August 22, 2023 at 9:00 a.m.

**Any failure to comply with the contingency may result in denial of final approval.**

Dated: 4/17/23



MAREN E. NELSON

Judge of the Superior Court