

FILED
Superior Court of California
County of Los Angeles

MAR 23 2023

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JORGE HUIZAR, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

NATIONAL METAL STAMPINGS, INC.,
a California Corporation; and, DOES 1
through 100, inclusive,

Defendants.

Case No.: 22STCV14679

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

I. BACKGROUND

Plaintiff Jorge Huizar sues his former employer, Defendant National Metal Stampings, Inc., for alleged wage and hour violations. Defendant operates a short run

1 metal stamping company. Plaintiff seeks to represent a class of Defendant's current
2 and former non-exempt employees.

3 On May 5, 2022, Plaintiff filed a class action complaint alleging causes of action
4 for: (1) failure to pay all wages (Labor Code § 218); (2) failure to provide meal periods
5 or compensation in lieu thereof (Labor Code §§ 226.7, 512, 516); (3) failure to provide
6 rest breaks or compensation in lieu thereof (Labor Code § 226.7); (4) failure to provide
7 accurate itemized wage statements (Labor Code § 226); (5) failure to reimburse
8 business expenses (Labor Code § 2802); (6) waiting time penalties (Labor Code §§
9 201-203); and (7) violations of the Unfair Competition Law (Business and Professions
10 Code §§ 17200, et seq.).

11 On July 20, 2022, the parties participated in a mediation before the Hon. Carl
12 West. (Ret.), which resulted in settlement. The terms were finalized in the Stipulation:
13 Re: Class Action and PAGA Settlement ("Settlement Agreement"), a copy of which is
14 attached to the Declaration of Sam Kim ("Kim Decl.") as Exhibit A.

15 On October 12, 2022, Plaintiff filed a First Amended Complaint ("FAC") adding
16 a claim under the Private Attorneys General Act (Labor Code §§ 2698, et seq.)
17 ("PAGA"). A motion for preliminary approval was filed November 7, 2022.

18 On March 21, 2023 the Court issued a minute order with issues to be discussed
19 at hearing. Plaintiff's counsel filed supplemental papers on March 22, 2023 and the
20 matter was heard that day.

21 For the reasons set forth below, the Court preliminarily grants approval of the
22 settlement contained in the Amended Stipulation for Settlement and PAGA Settlement
23 filed March 22, 2023.
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1 **II. THE TERMS OF THE SETTLEMENT**

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

3 "Class" means "all hourly employees employed by Defendant in the State of
4 California during the Class Period." (§1.5)

5 "Class Period" means the period from May 3, 2018 to July 20, 2022. (§1.12)

6 "Aggrieved Employee" means "all hourly employees employed by Defendant in
7 the State of California during the PAGA Period." (§1.4)

8 "PAGA Period" means the period from May 22, 2021 to July 20, 2022. (§1.31)

9 "Participating Class Member" means a Class Member who does not submit a
10 valid and timely Request for Exclusion from the Settlement. (§1.35)

11 Class Size Estimates: Based on its records, Defendant estimates that, as of the
12 date of the Settlement Agreement, (1) there are 72 Class Members and 10,840 Total
13 Workweeks during the Class period and (2) there were 58 Aggrieved Employees who
14 worked 3,214 Pay Periods during the PAGA Period. (§9)

15
16 **B. THE MONETARY TERMS OF SETTLEMENT**

17 The essential monetary terms are as follows:

- 18 ● The Gross Settlement Amount ("GSA") is **\$445,000** (§3.1). This includes
19 payment of a PAGA penalty of **\$15,000** to be paid 75% to the LWDA (\$11,250)
20 and 25% to the Aggrieved Employees (\$3,750) (§3.2.5).
- 21 ● The Net Settlement Amount ("Net") (**\$253,416.67**) is the GSA less:
 - 22 ○ Up to **\$148,333.33** (33 1/3%) for attorney fees (§3.2.2);
 - 23 ○ Up to **\$11,000** for attorney costs (*Ibid.*);
 - 24 ○ Up to **\$10,000** for a service award to the proposed class representative
25 (§3.2.1); and

1 ○ Estimated \$7,250 for settlement administration costs (§3.2.3).

- 2 ● Defendant will separately pay any and all employer payroll taxes owed on the
3 Wage Portions of the Individual Class Payments (§3.1).
- 4 ● Assuming the Court approves all maximum requested deductions, approximately
5 \$253,416.67 will be available for automatic distribution to participating class
6 members. Assuming full participation, the average settlement share will be
7 approximately \$3,519.67. ($\$253,416.67 \text{ Net} \div 72 \text{ class members} = \$3,519.67$).
8 In addition, each PAGA member will receive a portion of the PAGA penalty,
9 estimated to be \$64.65 per PAGA member. ($\$3,750 \text{ or } 25\% \text{ of } \$15,000 \text{ PAGA}$
10 penalty $\div 58 \text{ PAGA members} = \64.65).
- 11 ● There is no Claim Requirement (§3.1).
- 12 ● The settlement is not reversionary (§3.1).
- 13 ● Individual Settlement Share Calculation: Each Participating Class Member's
14 Individual Class Payment will be calculated by (a) dividing the Net Settlement
15 Amount by the total number of Workweeks worked by all Participating Class
16 Members during the Class Period and (b) multiplying the result by each
17 Participating Class Member's Workweeks. (§3.2.4) Non-Participating Class
18 Members will not receive any Individual Class Payments. The Administrator
19 will retain amounts equal to their Individual Class Payments in the Net
20 Settlement Amount for distribution to Participating Class Members on a pro rata
21 basis. (§3.2.4.2)
- 22 ● PAGA Payment Calculation: The Administrator will calculate each Individual
23 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25%
24 share of PAGA Penalties (\$3,750) by the total number of PAGA Period Pay
25 Periods worked by all Aggrieved Employees during the PAGA Period and (b)

1 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
2 (§3.2.5.1)

- 3 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
4 will be allocated as 20% to wages; 80% to interest and penalties (§3.2.4.1). The
5 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

6 (§3.2.5.2)

- 7 • Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount,
8 and also fund the amounts necessary to fully pay Defendant's share of payroll
9 taxes by transmitting the funds to the Administrator no later than 14 days after
10 the Effective Date. (§4.3)

- 11 • Distribution: Within 14 days after Defendant funds the Gross Settlement
12 Amount, the Administrator will mail checks for all Individual Class Payments,
13 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
14 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
15 Litigation Expenses Payment, and the Class Representative Service Payment.
16 Disbursement of the Class Counsel Fees Payment, Class Counsel Litigation
17 Expenses Payment and the Class Representative Service Payment shall not
18 precede disbursement of Individual Class Payments and Individual PAGA
19 Payments. (§4.4)

- 20 • Uncashed Settlement Payment Checks: The face of each check shall prominently
21 state the date (not less than 180 days after the date of mailing) when the check
22 will be voided. (§4.4.1) For any Class Member whose Individual Class Payment
23 check is uncashed and cancelled after the void date, the Administrator shall
24 transmit the funds represented by such checks to the California Controller's
25 Unclaimed Property Fund in the name of the Class Member thereby leaving no

1 "unpaid residue" subject to the requirements of California Code of Civil
2 Procedure Section 384, subd. (b). (§4.4.3)

3
4 **C. TERMS OF RELEASES**

- 5 • Releases of Claims: Effective on the date when Defendant fully funds the entire
6 Gross Settlement Amount and funds all employer payroll taxes owed on the
7 Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and
8 Class Counsel will release claims against all Released Parties as follows: (§6)
- 9 • Release by Participating Class Members: All Participating Class Members, on
10 behalf of themselves and their respective former and present representatives,
11 agents, attorneys, heirs, administrators, successors, and assigns, release Released
12 Parties from all claims that were alleged, or reasonably could have been alleged,
13 based on the Class Period facts stated in the Operative Complaint, including the
14 failure to pay all wages (including overtime), failure to provide meal periods or
15 compensation in lieu thereof, failure to provide rest breaks or compensation in
16 lieu thereof, failure to provide accurate itemized wage statements, failure to
17 reimburse business expenses, waiting time penalties, violations of the unfair
18 competition law. Except as set forth in Section 6.3 of this Agreement,
19 Participating Class Members do not release any other claims, including claims
20 for vested benefits, wrongful termination, violation of the Fair Employment and
21 Housing Act, unemployment insurance, disability, workers' compensation, or
22 claims based on facts occurring outside the Class Period. (§6.2)
- 23 • Release by Aggrieved Employees: All Aggrieved Employees are deemed to
24 release, on behalf of themselves and their respective former and present
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns,

1 the Released Parties from all claims for PAGA penalties that were alleged, or
2 reasonably could have been alleged, based on the PAGA Period facts stated in
3 the Operative Complaint and the PAGA Notice, including the failure to pay all
4 wages (including overtime), failure to provide meal periods or compensation in
5 lieu thereof, failure to provide rest breaks or compensation in lieu thereof, failure
6 to provide accurate itemized wage statements, failure to reimburse business
7 expenses, and waiting time penalties. (¶6.3)

8 ○ “PAGA Notice” means Plaintiff’s May 11, 2022 letter to Defendant and
9 the LWDA providing notice pursuant to Labor Code section 2699.3,
10 subd.(a). (¶1.33)

- 11 ● “Released Parties” means: Defendant and each of its former and present
12 directors, officers, shareholders, owners, members, attorneys, insurers,
13 predecessors, successors, assigns, subsidiaries, and affiliates. (¶1.41)
- 14 ● The named Plaintiff will also provide a general release and a waiver of the
15 protections of Cal. Civ. Code §1542. (¶6.1)
- 16 ● The releases are effective on the date when Defendant fully funds the entire
17 Gross Settlement Amount, which will occur later than 14 days after the Effective
18 Date. (¶4.3)

19
20 **D. SETTLEMENT ADMINISTRATION**

- 21 ● The proposed Settlement Administrator is Phoenix Class Action Administration
22 Solutions (¶1.2), which has provided evidence that no counsel are affiliated with it
23 and that it has adequate procedures in place to safeguard the data and funds to be
24 entrusted to it. (See Declaration of Jodey Lawrence.)
- 25 ● Settlement administration costs are estimated to be \$7,250 (¶3.2.3).

- 1 • Notice: The manner of giving notice is described below.
- 2 • Opt Out/Objection Dates: "Response Deadline" means 60 days after the
- 3 Administrator mails Notice to Class Members, and shall be the last date on which
- 4 Class Members may: (a) fax, email, or mail Requests for Exclusion from the
- 5 Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class
- 6 Members to whom Notice Packets are resent after having been returned
- 7 undeliverable to the Administrator shall have an additional 14 calendar days
- 8 beyond the Response Deadline has expired. (¶1.43) The same deadline applies to
- 9 the submission of workweek disputes. (¶8.6)
 - 10 ○ Because future PAGA claims are subject to claim preclusion upon entry of
 - 11 the Judgment, Non-Participating Class Members who are Aggrieved
 - 12 Employees are deemed to release the claims identified in Paragraph 6.3 of
 - 13 this Agreement and are eligible for an Individual PAGA Payment. (¶8.5.4)
 - 14 ○ If the number of valid Requests for Exclusion identified in the Exclusion
 - 15 List exceeds 10% of the total of all Class Members, Defendant may, but is
 - 16 not obligated, elect to withdraw from the Settlement. (¶10)
- 17 • Notice of Final Judgment will be posted on the Settlement Administrator's website
- 18 (¶8.8.1).

20 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

1 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
2 Court, rule 3.769(c).

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

16 “The burden is on the proponent of the settlement to show that it is fair and
17 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
18 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
19 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
20 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
21 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

22 Notwithstanding an initial presumption of fairness, “the court should not give
23 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
24 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
25 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*

1 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
2 members, the court must independently and objectively analyze the evidence and
3 circumstances before it in order to determine whether the settlement is in the best
4 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
5 In that determination, the court should consider factors such as “the strength of
6 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
7 the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the
10 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
11 factors is not exclusive and the court is free to engage in a balancing and weighing of
12 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
13 245.

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

21 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

22 23 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

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

On July 20, 2022, the parties participated in a mediation before the Hon. Carl West. (Ret.), which resulted in settlement. (Kim Decl. ¶11.)

2. The investigation and discovery were sufficient

Class Counsel represents that prior to attending mediation, the parties exchanged the following information: (1) all time keeping records for Plaintiff between May 3, 2018 to June 13, 2022; (2) all payroll records for Plaintiff between May 3, 2018 to June 13, 2022; (3) the personnel file for Plaintiff; (4) all documents signed by Plaintiff between May 3, 2018 to June 13, 2022; (5) all employee handbooks used by Defendant between May 3, 2018 to June 13, 2022; (6) all wage and hour policies used by Defendant between May 3, 2018 to June 13, 2022; (7) an exemplar of all meal period waivers, if any, used by Defendant between May 3, 2018 to June 13, 2022; (8) 35% random sampling of full and complete payroll records for non-exempt hourly employee who worked for Defendant between May 3, 2018 to June 13, 2022, including both time keeping and payroll records; 9) total number of non-exempt hourly employees employed by Defendant between May 3, 2018 to June 13, 2022; 10) current number of non-exempt hourly employees employed by Defendant; and 11) state and end dates for all non-exempt hourly employees employed by Defendant between May 3, 2018 to June 13, 2022. (*Id.* at ¶20.) Counsel represented that the data sample had a 10% margin of error with a 78% confidence interval.

Counsel further represents that the parties agreed to a random selection process as based on the following (i.e., every third name on an alphabetical list), then the records for two consecutive two-week periods from each of the following time periods:

1 July 2018, November 2018, February 2019, October 2019, March 2020, December
2 2020, April 2021, September 2021, and May 2022. (*Id.* at ¶21.)

3 The data sample is not highly reliable. However, the sample was used primarily
4 to estimate the value of the meal period claim. The rest period and uniform cleaning
5 fee claim and the unpaid wage claim were based on 100% of all employees. The work
6 done was sufficient to value the case for settlement purposes.

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

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9 Class Counsel represent that they are experienced in class action litigation,
10 including wage and hour class actions. (*Id.* at ¶8.)

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

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

17 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 18 **FAIR, ADEQUATE, AND REASONABLE**

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20 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
21 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
22 does when it approves a settlement as in good faith under Code of Civil Procedure
23 section 877.6, the court must at least satisfy itself that the class settlement is within the
24 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
25 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to

1 consider and weigh the nature of the claim, the possible defenses, the situation of the
2 parties, and *the exercise of business judgment* in determining whether the proposed
3 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
4 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

5
6 **1. Amount Offered in Settlement**

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

9 Class Counsel estimated Defendant’s maximum exposure at \$3,976,975 and
10 realistic exposure at \$610,796.90, based on the following analysis:

11 Violation	Maximum Exposure	Realistic Exposure
12 Unpaid Wages Claim	\$207,810.00	\$37,772.10
13 Meal Period Claim	\$366,565.00	\$146,626.00
14 Rest Period Claim	\$1,016,137.00	\$152,420.55
15 Reimbursement Claim	\$32,966.00	\$23,076.20
16 Wage Statement Claim	\$229,750.00	\$34,462.50
17 Waiting Time Penalties	\$81,297.00	\$12,194.55
18 PAGA Penalties	\$2,042,450.00	\$204,245.00
19 Total	\$3,976,975.00	\$610,796.90

20 (MPA at pp. 12-18; Kim Decl. ¶¶29-49.)

21 Class Counsel obtained a gross settlement valued at \$445,000. This is
22 approximately 11.2% of Defendant’s maximum exposure and 72.8% of Defendant’s
23 calculated “realistic” exposure, which calculation includes PAGA penalties which are
24 discretionary.
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2. The Risks of Future Litigation

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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 endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Kim Decl. ¶13.)

The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA, which was sent a copy of the Settlement Agreement on March 22, 2023 and has not yet objected. (Supplemental Submission, Kim Decl., Exhibit 3.) Any objection by it will be considered at the final fairness hearing.

3. The Releases Are Limited

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

1 **4. Conclusion**

2 Class Counsel estimated Defendant’s maximum exposure at \$3,976,975 and
3 realistic exposure at \$610,796.90. Class Counsel obtained a gross settlement valued at
4 \$445,000. This is approximately 11.2% of Defendant’s maximum exposure and 72.8%
5 of Defendant’s realistic exposure, which, given the uncertain outcomes, including the
6 potential that the class might not be certified, that liability is a contested issue, and that
7 the full amount of penalties would not necessarily be assessed even if the class is certified
8 and liability found, the settlement is within the “ballpark of reasonableness.”

9
10 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

11 A detailed analysis of the elements required for class certification is not required,
12 but it is advisable to review each element when a class is being conditionally certified.
13 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
14 advocating class treatment must demonstrate the existence of an ascertainable and
15 sufficiently numerous class, a well-defined community of interest, and substantial
16 benefits from certification that render proceeding as a class superior to the alternatives.”
17 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

19 There are approximately 72 putative Class Members. (MPA at 9:7-9.)
20 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
21 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
22 *parties to a class action is liberally construed,*” and citing examples wherein classes of
23 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
24 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

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

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

7 The class is defined above. Class Members are ascertainable through
8 Defendant’s records. (MPA at 9:7-9.)

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

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

14 As to predominant questions of law or fact, Plaintiff asserts that Settlement Class
15 Members are subject to the same wages and hour policies, including meal and rest break
16 policies, bell-schedules, and reimbursement policies. (MPA at 9:16-22.)

17 As to typicality, Plaintiff represents that he worked for Defendant and suffered the
18 same wage and hour violations as the proposed class of employees he seeks to represent.
19 (Declaration of Jorge Huizar ¶¶3-4.)

20 As to adequacy, Plaintiff represents that he has participated in the litigation and is
21 aware of the risks and duties of serving as class representative. (*Id.* at ¶¶5-10.) As
22 previously stated, Class Counsel have experience in class action litigation.

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1 **4. Substantial Benefits Exist**

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

4
5 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**
6 **OF DUE PROCESS**

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

15 **1. Method of class notice**

16 Not later than 15 calendar days after the Court grants Preliminary Approval of
17 the Settlement, Defendant will simultaneously deliver the Class Data to the
18 Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to
19 perform as soon as possible, and in no event later than 14 days after receiving the Class
20 Data, the Administrator will send to all Class Members identified in the Class Data, via
21 first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish
22 translation. Before mailing Class Notices, the Administrator shall update Class Member
23 addresses using the National Change of Address database. (¶8.4.2)

24 Not later than 3 business days after the Administrator's receipt of any Class
25 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class

1 Notice using any forwarding address provided by the USPS. If the USPS does not
2 provide a forwarding address, the Administrator shall conduct a Class Member Address
3 Search, and re-mail the Class Notice to the most current address obtained. The
4 Administrator has no obligation to make further attempts to locate or send Class Notice
5 to Class Members whose Class Notice is returned by the USPS a second time. (§8.4.3)

6 The deadlines for Class Members' written objections, Challenges to Workweeks
7 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days
8 beyond the 60 days otherwise provided in the Class Notice for all Class Members
9 whose notice is re-mailed. The Administrator will inform the Class Member of the
10 extended deadline with the re-mailed Class Notice. (§8.4.4)

11 **2. Content of class notice.**

12 A copy of the proposed class notice is attached to the Settlement Agreement.
13 The notice includes information such as: a summary of the litigation; the nature of the
14 settlement; the terms of the settlement agreement; the maximum deductions to be made
15 from the gross settlement amount (i.e., attorney fees and costs, the enhancement award,
16 and claims administration costs); the procedures and deadlines for participating in,
17 opting out of, or objecting to, the settlement; the consequences of participating in,
18 opting out of, or objecting to, the settlement; and the date, time, and place of the final
19 approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be given in both
20 English and Spanish (§1.10).

21 **3. Settlement Administration Costs**

22 Settlement administration costs are estimated at **\$7,250**, including the cost of
23 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement
24 administrator must submit a declaration attesting to the total costs incurred and
25 anticipated to be incurred to finalize the settlement for approval by the Court.

1 **E. ATTORNEY FEES AND COSTS**

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

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

18 The question of class counsel’s entitlement to **\$148,333.33** (33 1/3%) in attorney
19 fees will be addressed at the final fairness hearing when class counsel brings a noticed
20 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
21 the court with current market tested hourly rate information and billing information so
22 that it can properly apply the lodestar method and must indicate what multiplier (if
23 applicable) is being sought.

24 Fee Split: Plaintiff represents that he gave written approval of the fee splitting
25 agreement between his attorneys in this case, Verum Law Group, APC (“Verum”), and

1 Mahoney Law Group, APC (“MLG”), which is represented to be the referring law firm.
2 Under the agreement, he gave written consent for Verum to divide 30% of any attorney
3 fee awarded to Verum in this case to MLG. (Decl. of Jorge Huizar ¶11.)

4 Class counsel should also be prepared to justify the costs sought (capped at
5 \$11,000) by detailing how they were incurred.

6 7 **F. SERVICE AWARD**

8 The Settlement Agreement provides for a service award of up to \$10,000 for the
9 class representative (¶3.2.1). Trial courts should not sanction enhancement awards of
10 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
11 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
12 form of quantification of time and effort expended on the litigation, and in the form of
13 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
14 required in order for the trial court to conclude that an enhancement was ‘necessary to
15 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
16 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
17 original.

18 The Court will decide the issue of the enhancement award at the time of final
19 approval.

20 21 **V. CONCLUSION AND ORDER**

22 The Court hereby:

- 23 (1) Grants preliminary approval of the settlement as fair, adequate, and
24 reasonable;
25 (2) Grants conditional class certification;

1 (3) Appoints Jorge Huizar as Class Representative;

2 (4) Appoints Verum Law Group, APC as Class Counsel;

3 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
4 Administrator;

5 (6) Approves the proposed notice plan; and

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

- 7 • Deadline for Defendant to provide class list to settlement administrator: April 8,
8 2023 (within 15 calendar days from preliminary approval)
- 9 • Deadline for settlement administrator to mail notices: April 22, 2023 (within 14
10 days after receiving the class list)
- 11 • Deadline for class members to opt out: June 21, 2023 (60 calendar days from the
12 initial mailing of the Notice Packets)
- 13 • Deadline for class members to object: June 21, 2023 (60 calendar days from the
14 initial mailing of the Notice Packets)
- 15 • Deadline for class counsel to file motion for final approval:
16 June 27, 2023 (16 court days prior to final fairness hearing)
- 17 • Final fairness hearing: July 20, 2023, at 9:00.

18
19 Dated: 3/23/23

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court