



By **September 5, 2024**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

Court sets **Non-Appearance Case Review is set for September 12, 2024, 8:30 a.m., Department 9.**

I.  
INTRODUCTION

A. Background

Plaintiff Humberto Puentes sues his former employer, Defendant SBR Inc., for alleged wage and hour violations. Defendant is a Los Angeles-based roofing contractor. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On June 6, 2018, Plaintiff filed the initial class action complaint against Defendant, alleging various wage and hour violations. On October 15, 2018, Plaintiff filed the operative First Amended Complaint, alleging causes of action for: (1) failure to pay all wages including overtime wages; (2) failure to provide rest periods; (3) failure to provide meal periods; (4) failure to provide accurate itemized wage statements; (5) failure to pay wages upon ending employment; (6) failure to indemnify for expenditures; (7) unfair competition (Business & Professions Code § 17200 et seq.; and (8) violation of Labor Code §§ 2698-2699 (Private Attorneys' General Act) ("PAGA").

On June 18, 2020, the Parties attended mediation with mediator J.J. Johnston, Esq., following which the Parties reached a resolution regarding the principal terms of settlement, which were subsequently formalized in the Joint Stipulation and Settlement Agreement ("Settlement Agreement"), a copy of which was filed with the Court.

On February 4, 2021, the Court issued a "checklist" of issues pertaining to deficiencies in Plaintiff's Motion for Preliminary Approval and the Settlement Agreement. In response, on April 9, 2021, the parties filed supplemental briefing, including the revised Settlement Agreement attached to the Supplemental Declaration of Kevin Mahoney as Exhibit 2.

On May 5, 2021, the Court granted preliminary approval subject to certain revisions within the settlement. In response, on July 26, 2021, counsel a revised Settlement Agreement

attached to the Third Supplemental Declaration of Kevin Mahoney as Exhibit 2.

The Court granted preliminary approval on July 30, 2021.

On January 7, 2022, counsel filed a Joint Stipulation to amend the Settlement Agreement, due to an increase in the class size beyond what the parties had anticipated at the time of settlement.

After the parties filed further revisions of the Settlement Agreement to address issues raised by the Court, the settlement was preliminarily approved on December 13, 2022, subject to certain conditions with which there was compliance, except for signatures of counsel on the agreement, as specified in the Court's order of 12/13/2022.

Now before the Court is the motion for final approval of the settlement agreement.

B. Settlement Class Definition.

Class: All persons who are or were retained by Defendant as non-exempt, hourly employees who performed services in the State of California during the Class Period. (Settlement Agreement ¶I.E)

Class Period: June 6, 2014, through July 30, 2021. (¶I.I)

Eligible Aggrieved Employees: The aggrieved employees eligible to recover the PAGA payment shall consist of all persons who are or were employed by Defendant as non-exempt, hourly employees and who performed services in the State of California during the PAGA Period. (¶I.P)

PAGA Period: June 6, 2017, through July 30, 2021. (¶I.Y)

The parties stipulate to class certification for settlement purposes only. (¶III.D)

C. Terms of Settlement Agreement

The essential terms are:

- The Gross Fund Value ("GFV") is \$370,000, non-reversionary. (¶I.S)

- o Escalation: Defendant estimates that the number of workweeks worked by Class Members through July 30, 2021 is approximately Twelve Thousand Four Hundred and Twenty-Three (12,423). This estimate serves as the basis for Plaintiff accepting the settlement. Should the number of workweeks increase by over ten percent, then, at Defendant's discretion, (1) the Class Period shall end on the date the increase in work weeks exceeds ten percent (10%) , or (2) the Settlement will increase proportionately (i.e., meaning that if the class size increases by 11%, then the gross settlement amount will increase by 11%). No additional payment shall be required unless the number of work weeks increases by more than 10%. (¶III.K.2.b)
- o At final approval, the settlement administrator represents that the total number of Workweeks worked by Settlement Class Members during the Class Period is 11,713. (Declaration of Taylor Mitzner ("Mitzner Decl.") ¶11.) Accordingly, the escalator clause was not triggered.
- The Net Fund Value ("NFV") (\$212,666.67) is the GFV minus the following:
  - o Up to \$123,333.33 (1/3) for attorney fees (¶I.D); [NOTE: slightly above 1/3]
  - o Up to \$15,000 for litigation costs (¶I.L);
  - o Up to \$5,000 as an incentive payment to the class representative (¶I.K);
  - o Up to \$6,500 for settlement administration costs (¶I.B); and
  - o Payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA (¶I.X).
- Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the GFV. (¶III.B)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (¶I.T)
- Response Deadline. Forty five (45) calendar days from the initial mailing of the Class Notice. (¶I.FF) This deadline applies to workweek disputes (¶III.K.2.e), written objections (¶III.K.3), and request for exclusion (¶III.K.4).
  - o If more than ten percent (10%) of the Class Members submit requests for exclusion, Defendant, at its sole option, may nullify the settlement within thirty (30) days of learning that 10% or more of the Settlement Class members timely and properly requested exclusion from the Settlement, and no later than five (5) days prior to the date of the Final Approval Hearing. (¶III.K.4.c)
- Individual Settlement Payment Calculation. Each Participating Class Member will receive a proportionate share of the Net Fund Value that is equal to (i) the number of pay

periods worked based on the Class data provided by Defendant, divided by the Net Fund Value. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of pay periods that he or she worked. (§III.H.1.a) The amount allocated to any Class Member who opts out of the Settlement will be included in the NSV and allocated on a pro-rata basis to those Class Members receiving payment under the Settlement. (§III.K.4)

o Individual PAGA Settlement Share Calculation: Each Aggrieved Employee will receive a proportionate share of 25% of the \$10,000 allocated to resolution of the PAGA claims. The PAGA Settlement Share will be determined by dividing the total number of Aggrieved Employee pay periods into the \$2,500.00 PAGA payment allocated to Aggrieved Employees. Aggrieved Employees will receive the Individual PAGA Settlement Share even if they request exclusion from the Settlement. (§III.H.1.b)

o Tax Allocation. Each individual settlement payment will be allocated as 20% to wages, 80% to interest and penalties. (§III.H.2)

• Funding of Settlement. Provided there is an Effective Settlement Agreement, no later than ten (10) calendar days after the Effective Final Settlement Date, Defendant shall pay the Gross Fund Value of \$370,000 and any apportioned employer's share of payroll taxes into the Qualified Settlement Fund set up by the Settlement Administrator by wiring the funds. (§III.K.9)

• Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, the Individual Settlement Share shall be transferred to the California's Secretary of State - Unclaimed Property Fund under the unclaimed property laws in the name of the Class Member/Eligible Aggrieved Employee. (§III.K.10)

• Phoenix Settlement Administrators will perform notice and settlement administration. (§I.HH)

• The Settlement Agreement was submitted to the LWDA on January 17, 2023. (Supp. Mahoney Decl. of January 17, 2023, Exhibit D.)

- Notice of Entry of Judgment will be posted on the Settlement Administrator's website. (Notice pg. 5.)
- Release of Claims. Upon Defendant's fulfillment of their payment obligation under Section III (K) (9), Class Members who do not submit a timely and valid request for exclusion hereby waive, release, promise never to assert in any forum, remise and forever discharge the Released Parties from the Released Claims for the time frame of the Class Period. (§III.L)
  - o Released Claims: The claims that Plaintiff, the other Participating Class Members, who do not file a timely request for exclusion, and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including but not limited to, their dependents, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (collectively, the "Releasing Parties") are fully and forever irrevocably releasing, in exchange for the consideration provided for by this Agreement, any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, liabilities, expenses, and losses arising from or alleged in, or arising out of the facts asserted in the operative complaint in this case, through the time of preliminary approval of the Settlement by the Court, whichever comes first including: (a) any alleged failure by Defendant to pay wages, and/or overtime; (b) any alleged failure by Defendant to timely pay wages at termination (c) any alleged failure by Defendant to provide meal or rest periods premiums; (d) any alleged failure by Defendant to provide compliant wage statements; (e) any alleged failure by Defendant to reimburse business expenses; (f) any right or claim for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 et seq., or any other penalties arising under the Labor Code or Wage Order arising from or related to the conduct alleged; (g) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 et seq. arising from or related to the conduct alleged; and (i) any violation or breach of the California Labor Code arising from or related to the conduct alleged, including without limitation, Labor Code section 201, 202, 203, 212, 226, 226.7, 510, 512, 558, 1194, 1199, 2800, 2802. (§I.DD)
  - o Plaintiff and Aggrieved Employees defined as those non-exempt employees who worked for Defendant at any time from June 6, 2017 to July 30, 2021, further waive any right or claim for civil penalties pursuant to the Labor Code Private Attorneys

General Act of 2004. California Labor Code § 2698 et seq., or any other penalties arising under the Labor Code or Wage Order arising from or related to recovery of civil penalties for the alleged violations of Labor Code sections 203, 204, 207, 222, 223, 226, 226.7, 510, 1182.12, 1194, 1198 and 2802. ("PAGA Release"). The PAGA Release will be effective and the Aggrieved Employee paid even if they request exclusion from the Settlement. Notwithstanding the above, the Parties understand and agree that the release in this Settlement does not apply to (i) those rights that as a matter of law cannot be released and/or waived, including, but not limited to, workers' compensation claims; (ii) rights or claims that may arise after the close of the Class Period; and (iii) rights or claims arising out of this Settlement. (¶I.DD)

- Effect of PAGA Settlement: Upon Defendant's fulfillment of their payment obligation under Section III (K) (9), this settlement forever bars Plaintiff, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Period, from pursuing any action under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq., against, the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in the Case. This release will be effective as to all Aggrieved Employees even if they request to opt-out of the Class Settlement. (¶III.M)

- o Released Parties: Defendant, its subsidiaries, affiliates, predecessors or successors in interest, and their respective past or present officers, directors, shareholders, employees, attorneys, agents, assigns, members, investors, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, parents and attorneys. (¶I.EE)

- o Named Plaintiff will additionally provide a general release and §1542 waiver. (¶¶I.DD, III.N)

## II. DISCUSSION

### A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On June 18, 2020, the Parties attended mediation with mediator J.J. Johnston, Esq. Although the Parties were not able to reach settlement, their counsel continued to negotiate on behalf of their respective clients and thereafter

reached agreement as to terms in principle on August 17, 2020. (Declaration of Kevin Mahoney ISO Prelim ¶30).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that in connection with mediation, the parties conducted discovery (both formal and informal) including review of: (1) Plaintiff's complete time and pay records; (2) a redacted thirty percent sampling of time and pay records of Class Members; (3) Defendant's written wage and hour policies in effect during the Class Period; and (4) financial information relating to Defendant's financial status in light of the economic downturn caused by the Covid-19 public health crisis (including relevant corporate tax returns, payroll analysis by Defendant's retained financial advisor and a summary detailing the cancelled and/or postponed construction projects lost by Defendant.). (Id. at ¶27).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class action cases. (Id. at ¶9).

4. What percentage of the class has objected? None. (Mitzner Decl. ¶9).

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Counsel provided the following exposure analysis:

Violation	Maximum Exposure	Realistic Exposure
Overtime/Off-the Clock Wage Claim	\$1,100,000.00	\$220,000.00
Meal & Rest Period Claims	\$2,200,000.00	\$110,000.00
Wage Statement Penalties	\$226,000.00	\$113,000.00
Waiting Time Penalties	\$199,000.00	\$59,700.00
Reimbursement Claim	\$48,000.00	\$48,000.00
PAGA Penalties	\$934,000.00	\$43,200.00



Total	\$4,707,000.00	\$593,900.00
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(Mahoney Decl. ISO Prelim ¶¶35-52; Supp. Mahoney Decl. ISO Prelim ¶8.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, 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.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See 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.”).)

4. Amount offered in settlement. Plaintiff’s counsel obtained a \$360,000 non-reversionary settlement. The \$360,000 settlement amount represents approximately 7.6% of Defendant’s maximum potential damages and 60.6% of Defendant’s realistic potential damages, which, given the uncertain outcomes, and Defendant’s financial condition, is within the “ballpark of reasonableness.”

The settlement amount, after the requested deductions, leaves approximately \$213,371.55 to be divided among 155 participating class members. The resulting payments will average approximately \$1,376.59 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of class members: 155 (Mitzner Decl. ¶3.)  
Number of notice packets mailed: 155 (Id. at ¶5.)  
Number of undeliverable notices: 3 (Id. at ¶7.)  
Number of opt-outs: 0 (Id. at ¶8.)  
Number of objections: 0 (Id. at ¶9.)  
Number of Participating Class Members: 155 (Id. at ¶11.)  
Average individual payment: \$1,376.59 (Id. at ¶14.)  
Highest estimated payment: \$6,958.76 (Ibid.)

C. Attorney Fees and Costs

Class Counsel requests an award of \$123,333.33 in fees and \$11,795.12 in costs. (Motion for Attorneys' Fees at 1:4-7, 9:18-19.) The Settlement Agreement provides for fees up to \$123,333.33 (33 1/3%) (¶1.D) and costs up to \$15,000 (¶I.L).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel requests attorney fees using the common fund method as cross-checked against the lodestar. (Motion for Attorneys' Fees at pp. 1-7.) In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.)

The fee request represents approximately 1/3 of the gross settlement amount, which is the average generally awarded in class actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

Counsel provided the following lodestar information:

Attorney/Firm	Rates	Hours	Totals
Mahoney Law Group, APC	\$150-750	218.9	\$126,547.50
Totals		218.9	\$126,547.50

(Odenbreit Decl. ISO Final ¶¶27-28, Exhibit C.)

Counsel's percentage-based fee request is lower than the unadjusted lodestar, which would require the application of an approximate 0.97x multiplier to reach the requested fees. Here, the \$123,333.33 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet and no one objected. (Mitzner Decl. ¶9, Exhibit A thereto.)

As for costs, Class Counsel is requesting \$11,795.12. This is less than the \$15,000 cap provided in the Settlement Agreement, for which Class Members were given notice and did not object. (Mitzner Decl. ¶9, Exhibit A thereto.) Costs include, but are not limited to: Mediation Case Anywhere, and Filing and Service Fees. (Odenbreit Decl. ISO Final, Exhibit D.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the court awards \$123,333.33 for attorneys' fees and \$11,795.12 for attorneys' costs.

D. Claims Administration Costs

The settlement administrator, Phoenix Settlement Administrators, requests administration costs of \$6,500 (Mitzner Decl. ¶17). This is equal to the estimated cost of \$6,500 provided for in the Settlement Agreement (¶I.B) and disclosed to Class Members in the Notice, to which no one objected. (Mitzner Decl. ¶9, Exhibit A thereto).

Based on the above, the court awards costs in the amount of \$6,500.

E. Incentive Award to Class Representative

Plaintiff Humberto Puentes seeks an enhancement award of \$5,000 for his contributions to the action. (Motion for Attorneys' Fees at 7:9-11.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours

expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . . .' (Id. at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this action include: meeting with and assisting his counsel, being available to assist with discovery and mediation, reviewing documents and discussing case strategy with his counsel, and searching for documents. He estimates spending 25 hours on the case. (Decl. of Humberto Puentes ISO Final ¶8.)

Based on the above, the court grants the enhancement award in the amount of \$5,000 to Plaintiff Humberto Puentes.

IV.  
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable, on the condition that counsel file a copy of the latest version of the Settlement Agreement that includes the signatures of each party's counsel, as specified in the Court's order of 12/13/2022.

2) The Parties' supplemental paperwork must be filed by September 12, 2023.

3) Non-Appearance Case Review is set for September 19, 2023, 8:30 a.m., Department 9.

4) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$370,000.

B. The Net Settlement Amount is the GSA minus the following:

\$123,333.33 for attorney fees to Class Counsel,  
Mahoney Law Group, APC;

\$11,795.12 for attorney costs to Class Counsel;

\$5,000 enhancement award to the class representative, Humberto Puentes;

\$6,500 for settlement administration costs to Phoenix Settlement Administrators;

\$7,500 (75% of \$10,000 PAGA penalty) to the LWDA.

C. Defendant will be separately responsible for its portion of payroll taxes in addition to the GSA.

D. Plaintiffs release of Defendants from claims described herein.

5) By October 5, 2023, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

6) By September 5, 2024, Class Counsel must file a Final Report re: Distribution of the settlement funds.

7) Court sets Non-Appearance Case Review is set for September 12, 2024, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: September 5, 2023



*Yvette M. Palazuelos*

YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT

Yvette M. Palazuelos / Judge