

FILED
Superior Court of California
County of Los Angeles

JUN 16 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

CARLOS ENRIQUE PEREZ, an individual
and on behalf of all others similarly situated,

Plaintiff,

v.

MIRACLE MILE HEALTHCARE
CENTER, LLC, a California limited liability
company; MIRACLE MILE POST ACUTE
LLC, a California limited liability company;
WESTSIDE HEALTH CARE, LLC, a
California limited liability company;
BEVERLY WEST HEALTHCARE, LLC, a
California limited liability company;
TRINITY NURSING HOME
MANAGEMENT, INC., a California
corporation; CPE HR, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21STCV43674

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: June 13, 2023
Time: 9:00 a.m.
Dept.: SSC-17

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2 **I. BACKGROUND**

3 Plaintiff Carlos Enrique Perez sues his former employer, Defendants Miracle
4 Mile Healthcare Center, LLC, Miracle Mile Post Acute, LLC, and CPE HR, Inc.
5 (collectively, “Defendants”) for alleged wage and hour violations. Defendants operate
6 a nursing home facility in Los Angeles, California. Plaintiff seeks to represent a class
7 of Defendants’ current and former non-exempt employees.

8 On November 30, 2021, Plaintiff filed a complaint against Defendants Miracle
9 Mile Healthcare Center, LLC, Miracle Mile Post Acute, LLC, Westside Health Care,
10 LLC, Beverly West Healthcare, LLC, Trinity Nursing Home Management, Inc., and
11 CPE HR, Inc. alleging causes of action for: (1) failure to pay overtime wages (Labor
12 Code §§ 510, 1194, 1199); (2) failure to pay minimum wages (Labor Code §§ 1197,
13 1199); (3) failure to provide meal periods (Labor Code §§ 226.7, 512); (4) failure to
14 provide rest periods (Labor Code § 226.7); (5) failure to pay all wages due upon
15 termination (Labor Code §§ 201, 202, 203); (6) failure to provide accurate wage
16 statements (Labor Code § 226); and (7) unfair competition (Bus. & Prof. Code § 17200,
17 et seq.).

18 On February 2, 2022, Plaintiff filed a separate representative action under the
19 Private Attorneys’ General Act of 2004 (“PAGA”) (Case No. 22STCV04088) seeking
20 civil penalties against Defendant for various alleged Labor Code violations.

21 On April 25, 2022, the parties participated in a full-day mediation before Lisa
22 Klerman, Esq. and reached settlement with the aid of the mediator’s evaluation.
23 Pursuant to the settlement, the parties agreed to file a First Amended Complaint in order
24 to effectively consolidate Plaintiff’s class action and PAGA action cases. The terms of
25

1 settlement were finalized in the long-form Joint Stipulation Re: Class Action And
2 Representative Action Settlement, a copy of which is attached to the Declaration of
3 Vedang J. Patel filed September 30, 2022 as Exhibit 1.

4 On December 27, 2022, Plaintiff dismissed his class claims against Defendant
5 Beverly West Healthcare, LLC. On the same date, Plaintiff filed the operative First
6 Amended Complaint, adding a cause of action for civil penalties under PAGA. Plaintiff
7 dismissed his PAGA action on December 30, 2022.

8 On March 10, 2023, the Court issued a “checklist” to the parties pertaining to
9 deficiencies with the proposed settlement. In response, counsel filed further briefing,
10 including the First Amended Joint Stipulation Re: Class Action And Representative
11 Action Settlement (“Settlement Agreement”) attached as Exhibit 1 to the Declaration of
12 David D. Bibiyan filed May 19, 2023 (“Bibiyan Decl.”). All references below are to
13 that agreement.

14 Now before the Court is Plaintiff’s motion for preliminary approval of the
15 settlement. For the reasons set forth below, the Court preliminarily grants approval of
16 the settlement.

17 **II. THE TERMS OF THE SETTLEMENT**

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

19 “Settlement Class” or “Settlement Class Members means all current and former
20 non-exempt, hourly-paid employees who worked in California for Defendants at any
21 time during the Class Period. (§1.DD)

22 “Defendants” means, collectively, Miracle Mile Healthcare Center, LLC,
23 Miracle Mile Post Acute, LLC, and CPE HR, Inc. (§1.H)
24
25

1 “Class Period” means the period from February 1, 2020 through April 25, 2022.

2 (¶1.D)

3 “Aggrieved Employees” means Class Members working for Defendants during
4 the PAGA Period as non-exempt, hourly-paid employees in California. (¶1.B)

5 “PAGA Period” means the period from November 29, 2020 through April 25,
6 2022. (¶1.S)

7 “Participating Class Members” means all Settlement Class Members who do not
8 submit a timely and valid Request for Exclusion. (¶1.T)

9
10 **B. THE MONETARY TERMS OF SETTLEMENT**

11 The essential monetary terms are as follows:

- 12 • The Gross Settlement Amount (“GSA”) is **\$345,000** (¶1.K). This includes
13 payment of a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000)
14 and 25% to the Aggrieved Employees (\$5,000) (¶1.O).

- 15 ○ Increase in Workweeks: Defendants represent that there are
16 approximately 10,171 Workweeks worked during the Class Period. In the
17 event that it is determined that the number of Workweeks worked by
18 Class Members during the Class Period increases by more than 10% or
19 1,017 Workweeks, then the Gross Settlement Amount shall be increased
20 proportionally by the Workweeks in excess of 11,188 Workweeks
21 multiplied by the Workweek Value. The Workweek Value shall be
22 calculated by dividing the originally agreed-upon Gross Settlement
23 Amount (\$345,000.00) by 10,171, which amounts to a Workweek Value
24 of \$33.92. Thus, for example, should there be 12,000 Workweeks in the
25 Class Period, then the Gross Settlement Amount shall be increased by

1 \$27,543.04. ((12,000 Workweeks 11,188 Workweeks) x \$33.92 per
2 Workweek.). (¶17)

- 3 • The Net Settlement Amount (“Net”) (**\$161,000**) is the GSA less:
 - 4 ○ Up to **\$120,750** (35%) for attorney fees (¶12);
 - 5 ○ Up to **\$25,000** for attorney costs (*Ibid.*);
 - 6 ○ Up to **\$7,500** for a service award to the proposed class representative
7 (¶13); and
 - 8 ○ Estimated **\$10,750** for settlement administration costs (¶8.A).
- 9 • Employer-side payroll taxes will be paid by Defendants separate, apart, and in
10 addition to the Gross Settlement Amount. (¶14.c)
- 11 • Assuming the Court approves all maximum requested deductions, approximately
12 \$161,000 will be available for automatic distribution to participating class
13 members. Assuming full participation, the average settlement share will be
14 approximately \$609.84. ($\$161,000 \text{ Net} \div 264 \text{ class members} = \609.84). In
15 addition, each Aggrieved Employee will receive a portion of the PAGA penalty,
16 estimated to be \$26.31 per Aggrieved Employee. ($\$5,000 \text{ or } 25\% \text{ of } \$20,000$
17 PAGA penalty $\div 190 \text{ Aggrieved Employees} = \26.31).
- 18 • There is no Claim Requirement (Notice p. 1).
- 19 • The settlement is not reversionary (¶1.K).
- 20 • Individual Settlement Share Calculation: Individual Settlement Payments will be
21 calculated and distributed to Participating Class Members from the Net
22 Settlement Amount on a pro rata basis, based on the Participating Class
23 Members' respective number of Workweeks during the Class Period. (¶10) To
24 determine each Participating Class Member's Participating Individual Settlement
25 Share, the Settlement Administrator will determine the aggregate number of

1 Workweeks worked by all Participating Class Members during the Class Period
2 ("Participating Class Workweeks") and use the following formula: Individual
3 Settlement Share = (Participating Class Member's Workweeks / Participating
4 Class Workweeks) x Net Settlement Amount. (§10.C)

- 5 • **PAGA Payment Calculation:** Individual PAGA Payments to Aggrieved
6 Employees will be calculated and distributed to Aggrieved Employees from the
7 PAGA Payment on a pro rata basis based on Aggrieved Employees' respective
8 number of Workweeks during the PAGA Period. (§10) To determine each
9 Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator
10 will use the following formula: Aggrieved Employee's Individual PAGA
11 Payment = (Aggrieved Employee's Workweeks / PAGA Workweeks) x
12 \$5,000.00 (the PAGA Payment). (§10.E)
- 13 • **Tax Withholdings:** Each Individual Settlement Share shall be allocated as
14 follows: 20% as wages and 80% as interest and penalties. Each Individual
15 PAGA Payment shall be allocated entirely as penalties. (§14.a)
- 16 • **Funding of Settlement:** Defendants shall, within thirty (30) calendar days of
17 Final Approval Date, make payment of the Gross Settlement Amount (as the
18 same may be escalated pursuant to Paragraph 17 of the Agreement) and
19 Employer Taxes to the Settlement Administrator pursuant to Internal Revenue
20 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement
21 account with an FDIC insured banking institution. (§11.B)
- 22 • **Distribution:** Within seven (7) calendar days after payment of the full Gross
23 Settlement Amount and Employer Taxes by Defendants, or as soon thereafter as
24 practicable, the Settlement Administrator shall distribute all Payments due from
25 the QSA for: (1) the Service Award to Plaintiff; (2) the Attorneys' Fees and Cost

1 Award to be paid to Class Counsel; (3) the Settlement Administrator Costs; (4)
2 the LWDA Payment; (5) Individual Settlement Payments to Participating Class
3 Members, less applicable taxes and withholdings; and (5) Individual PAGA
4 Payments. All interest accrued shall be for the benefit of the Class Members and
5 distributed on a pro rata basis to Participating Class Members based on the
6 number of Workweeks worked by them in the Class Period. (¶11.C)

- 7 • **Uncashed Settlement Payment Checks:** Individual Settlement Payment and
8 Individual PAGA Payment checks shall remain valid and negotiable for one
9 hundred and eighty (180) calendar days after the date of their issuance. Within
10 seven (7) calendar days after expiration of the 180-day period, checks for such
11 payments shall be canceled and funds associated with such checks shall be
12 transmitted to the California Controller's Office, Unclaimed Property Fund.
13 (¶11.A)

14 15 **C. TERMS OF RELEASES**

- 16 • **Release by All Participating Class Members:** Effective only upon the entry of an
17 Order granting Final Approval of the Settlement, entry of Judgment, and
18 payment by Defendants to the Settlement Administrator of the full Gross
19 Settlement Amount and Employers' Taxes necessary to effectuate the
20 Settlement, Plaintiff and all Participating Class Members release all claims
21 against the Released Parties asserted in the Operative Complaint filed in the
22 Action, or any and all claims that may be asserted against the Released Parties
23 based on the factual allegations in the Operative Complaint, as follows: For the
24 duration of the Class Period, the release includes, for Participating Class
25 Members: (1) all claims for failure to pay overtime wages; (2) all claims for

1 failure to pay minimum wages; (3) all claims for failure to provide compliant
2 meal periods, or premium compensation in lieu thereof; (4) all claims for failure
3 to provide compliant rest periods, or premium compensation in lieu thereof; (5)
4 all claims for failure to pay all wages due upon separation from employment; (6)
5 all claims for failure to issue accurate and compliant wage statements; and (7) all
6 claims asserted through California Business & Professions Code section 17200,
7 et seq. arising out of the Labor Code violations referenced in the Complaint (the
8 “Class Released Claims”). (§7.A)

- 9 • Release by All Aggrieved Employees: Effective only upon the entry of an Order
10 granting Final Approval of the Settlement, entry of Judgment, and payment by
11 Defendants to the Settlement Administrator of the full Gross Settlement Amount
12 and Employers’ Taxes necessary to effectuate the Settlement, for Aggrieved
13 Employees, and, to the extent permitted by law, the State of California, the
14 release includes for the duration of the PAGA Period, all claims asserted in the
15 PAGA Notice and thereafter alleged in the Operative Complaint for PAGA civil
16 penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and
17 2699 in connection with alleged violations of Labor Code sections 96, 98.6, 200,
18 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512,
19 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2699, 2802, and 2810.5 (the “PAGA
20 Released Claims”). The Class Released Claims and PAGA Released Claims
21 shall be referred to as the “Released Claims”. All Aggrieved Employees, the
22 LWDA, and State of California shall release claims arising under PAGA for the
23 PAGA Period as set forth in the PAGA Released Claims. The PAGA Released
24 Claims shall be effective for Aggrieved Employees regardless of their decision
25 to participate in the class settlement. (§7.B)

- 1 • Claims Not Released: The releases above expressly exclude all other claims,
2 including claims for vested benefits, wrongful termination, unemployment
3 insurance, disability, social security, workers' compensation, and any other
4 claims outside of the Class Released Claims of Participating Class Members
5 arising during the Class Period and the PAGA Released Claims of Aggrieved
6 Employees (and, to the extent permitted by law, the State of California) arising
7 outside of the PAGA Period. (¶7.C)
- 8 • "Released Parties" shall mean Defendants and each of their past, present, and
9 future respective subsidiaries, dba's, affiliates, parents, divisions, insurers and
10 reinsurers, assigns, joint venturers, and company-sponsored employee benefit
11 plans of any nature and their successors and predecessors in interest, including
12 all of their officers, members, managers, partners, investors, lenders, directors,
13 shareholders, exempt-employees, agents, principals, heirs, representatives,
14 accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees,
15 and agents. (¶1.X)
- 16 ○ "Defendants" means, collectively, Miracle Mile Healthcare Center, LLC,
17 Miracle Mile Post Acute, LLC, and CPE HR, Inc. (¶1.H) Class Counsel
18 represents that named defendants Westside Health Care, LLC and Trinity
19 Nursing Home Management, Inc. are believed to be predecessors in
20 interest of Defendants. (Bibiyon Decl. ¶91.)
- 21 • The named Plaintiff will also provide a general release and a waiver of the
22 protections of Cal. Civ. Code §1542. (¶7.D)
- 23 • The releases are effective only upon the entry of an Order granting Final
24 Approval of the Settlement, entry of Judgment, and payment by Defendants to
25 the Settlement Administrator of the full Gross Settlement Amount and

1 Employers' Taxes necessary to effectuate the Settlement, which will occur
2 within thirty (30) calendar days of Final Approval Date (§11.B).

3
4 **D. SETTLEMENT ADMINISTRATION**

- 5 • The proposed Settlement Administrator is Phoenix Class Action Administration
6 Solutions (§8.A), which has provided evidence that no counsel are affiliated with it
7 and that it has adequate procedures in place to safeguard the data and funds to be
8 entrusted to it. (See Declaration of Jodey Lawrence.)
- 9 • Settlement administration costs are estimated to be \$10,750 (Lawrence Decl. §17).
- 10 • Notice: The manner of giving notice is described below.
- 11 • Response Deadline: "Response Deadline" means the deadline for Settlement Class
12 Members to mail any Requests for Exclusion, Objections, or Workweek Disputes
13 to the Settlement Administrator, which is forty-five (45) calendar days from the
14 date that the Class Notice is first mailed in English and Spanish by the Settlement
15 Administrator, unless a Class Member's notice is re-mailed. In such an instance,
16 the Response Deadline shall be fifteen (15) calendar days from the re-mailing, or
17 forty-five (45) calendar days from the date of the initial mailing, whichever is
18 later, in which to postmark a Request for Exclusion, Workweek Dispute or
19 Objection. The date of the postmark shall be the exclusive means for determining
20 whether a Request for Exclusion, Objection, or Workweek Dispute was submitted
21 by the Response Deadline. (§1.Y)
 - 22 ○ Settlement Class Members who worked during the PAGA Period as
23 Aggrieved Employees that submit a valid Request for Exclusion will still
24 be deemed Aggrieved Employees, will still receive their Individual PAGA

1 Payments, and will be bound by the release of the PAGA Released Claims.
2 (¶9.C)

3 ○ If more than five percent (7%) of the Class Members elect not to participate
4 in the Settlement, Defendants may, at its election, rescind the Settlement
5 Agreement and all actions taken in furtherance of it will be thereby null and
6 void. (¶19)

7 ● Notice of Final Judgment will be posted on the Settlement Administrator’s website
8 (¶18).

9
10 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

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

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

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

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

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

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

11 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

12 **A. THERE IS A PRESUMPTION OF FAIRNESS**

13
14
15 The settlement is entitled to a presumption of fairness for the following reasons:

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

17
18 On April 25, 2022, the parties participated in a full-day mediation before Lisa
19 Klerman, Esq. and reached settlement with the aid of the mediator’s evaluation.

20 (Bibyan Decl. ¶7.)

21 //

22 //

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

24 No formal discovery was taken. Class Counsel represents that prior to mediation,
25 Plaintiff was provided with, among other things: (1) a 21.5% sampling of time and

1 payroll records for an estimate of 264 putative class members; (2) average rates of pay
2 for all putative class members; (3) the total number of Workweeks and pay periods
3 worked by putative class members and class members eligible for PAGA penalties; (4)
4 the total number of putative class members separated from employment with
5 Defendants during the period from February 1, 2020 through mediation; and (5)
6 Defendants' California 2019 employee handbook. (*Id.* at ¶6.)

7 As to the sampling reviewed, Counsel represents their belief that the sample is
8 reliable because by using the sample size calculator Raosoft, they determined that a
9 random sample of 57 employees for a class of 264 employees resulted a 90%
10 confidence level with a 10% margin of error. (*Id.* at ¶94.) Although at the marginal end
11 of reliability this is sufficient to assist in preliminarily valuing the case for settlement
12 purposes.

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

14
15 Class Counsel represent that they are experienced in class action litigation,
16 including wage and hour class actions. (Decl. of Bibiyan filed September 30, 2022, ¶8.)

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

18
19 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
20 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
21 the court receive objections to the proposed settlement, it will consider and either sustain
22 or overrule them at the fairness hearing.”].

23 //

24 //

1 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
2 **FAIR, ADEQUATE, AND REASONABLE**

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

14
15 **1. Amount Offered in Settlement**

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

18 Class Counsel estimated Defendants’ maximum exposure at \$4,367,164 and
19 exposure with discounted PAGA penalties at \$3,283,377, based on the following
20 analysis:

21

Violation	Maximum Exposure	Discounted Exposure
Unpaid Wages (Rounding)	\$14,955.00	--
Unpaid Wages (Off-the- 23 Clock Work)	\$497,407.00	--
Meal Period Violations	\$609,700.00	--

25

1	Rest Period Violations	\$445,748.00	--
2	Unpaid Vacation Pay	\$91,837.00	--
3	Wage Statement Penalties	\$344,100.00	--
4	Waiting Time Penalties	\$918,367.00	--
5	PAGA Penalties	\$1,445,050.00	\$361,263.00
6	Total	\$4,367,164.00	\$3,283,377.00

7 (Bibiyán Decl. ¶¶23-67.)

8 Class Counsel obtained a gross settlement valued at \$345,000. This is
9 approximately 7.8% of Defendants' maximum exposure and 10.5% of Defendants'
10 exposure with discounted PAGA penalties.

11
12 **2. The Risks of Future Litigation**

13 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
14 motion practice and appeals) are also likely to prolong the litigation as well as any
15 recovery by the class members. Even if a class is certified, there is always a risk of
16 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
17 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
18 conducting class actions, which means, under suitable circumstances, entertaining
19 successive motions on certification if the court subsequently discovers that the propriety
20 of a class action is not appropriate.”.] Further, the settlement was negotiated and
21 endorsed by Class Counsel who, as indicated above, are experienced in class action
22 litigation. Based upon their investigation and analysis, the attorneys representing
23 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
24 adequate. (Bibiyán Decl. ¶66.)

1 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
2 which was sent a copy of the Settlement Agreement on May 18, 2023 and has not yet
3 objected. (Bibiyán Decl., Exhibit 5.) Any objection by it will be considered at the final
4 fairness hearing.

5
6 **3. The Releases Are Limited**

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

12
13 **4. Conclusion**

14 Class Counsel estimated Defendant's maximum exposure at \$4,367,164 and
15 exposure with discounted PAGA penalties at \$3,283,377. Class Counsel obtained a gross
16 settlement valued at \$345,000. This is approximately 7.8% of Defendants' maximum
17 exposure and 10.5% of Defendants' exposure with discounted PAGA penalties, which,
18 given the uncertain outcomes, including the potential that the class might not be certified,
19 that liability is a contested issue, and that the full amount of penalties would not
20 necessarily be assessed even if the class is certified and liability found, the settlement is
21 within the "ballpark of reasonableness."

22 //
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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 approximately 264 putative Class Members. (Bibiyán Decl. ¶83.)
11 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
12 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
13 *parties to a class action is liberally construed,*” and citing examples wherein classes of
14 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
15 *Colgrove* (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. (Bibiyán Decl. ¶83)

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 the litigation is
7 brought to resolve common issues that include, without limitation: (1) whether Class
8 Members are entitled to pay for tasks performed off-the-clock; (2) whether Defendants’
9 rounding of time entries detrimentally harmed Class Members; (3) whether Defendants
10 provided full, un-interrupted meal periods; (4) whether Class Members are entitled to
11 premium pay interrupted meal periods; (5) whether Defendants provided full, un-
12 interrupted meal periods; (6) whether Class Members are entitled to premium pay for
13 interrupted rest periods; (7) whether Defendants failed to pay accrued vacation pay at the
14 time of separation of employment; (8) whether the failure to pay for time worked off-the-
15 clock entitles Class Members to waiting time penalties or wage statement violations; (9)
16 whether the failure to pay due premium wages entitles Class Members to waiting time
17 penalties or wage statement violations; (10) whether the failure to pay for all time worked
18 was willful to justify waiting time penalties or wage statement violations; and (11)
19 whether the failure to pay for all time worked constitutes an injury sufficient to justify
20 wage statement violations. (Bibiyan Decl. ¶85.)

21 As to typicality, Plaintiff contends that his claims are typical of those of other
22 Class Members as Plaintiff: (1) is a non-exempt, hourly-paid employee like other Class
23 Members; (2) complains of not being paid for all time under Defendants’ control or
24 suffered and/or permitted to work for Defendants; and (3) never received premium pay
25 for rest periods that were not provided to Class Members, among others. (*Id.* at ¶86.)

1 As to adequacy, Plaintiff represents that he has participated in the litigation and is
2 aware of the duties and risks of serving as class representative. (See Declaration of
3 Carlos Enrique Perez.) As previously stated, Class Counsel have experience in class
4 action litigation.

5 6 **4. Substantial Benefits Exist**

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

9 10 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 11 OF DUE PROCESS**

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

20 **1. Method of class notice**

21 Within fourteen (14) calendar days after the Preliminary Approval Date,
22 Defendants Counsel shall provide the Settlement Administrator with the Class List.
23 Additionally, within fourteen (14) calendar days after the Preliminary Approval Date,
24 Defendant will provide a declaration from its data analyst to Class Counsel attesting to
25 the number of Workweeks calculated and methodology in calculating the number of

1 Workweeks. Because social security numbers are included in the list, the Settlement
2 Administrator will maintain the list in confidence, and shall only access and use the list
3 to administer the settlement in conformity with the Court's orders. The Settlement
4 Administrator shall perform an address search using the United States Postal Service
5 National Change of Address ("NCOA") database and update the addresses contained on
6 the Class List with the newly-found addresses, if any. Within seven (7) calendar days of
7 receiving the Class List from Defendants, the Settlement Administrator shall mail the
8 Class Notice in English and Spanish to the Settlement Class Members via first-class
9 regular U.S. Mail using the most current mailing address information available. The
10 Settlement Administrator shall maintain the Class List and digital copies of all
11 Settlement Class Member, for at least four (4) years from the Final Approval Date.

12 (¶9.A.1)

13 If a Class Notice from the initial notice mailing is returned as undeliverable, the
14 Settlement Administrator will attempt to obtain a current address for the Settlement
15 Class Member to whom the returned Class Notice had been mailed, within five (5)
16 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement
17 Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement
18 Administrator is successful in obtaining a new address, it will, within (2) calendar days,
19 re-mail the Class Notice to the Settlement Class Member. Further, any Class Notices
20 that are returned to the Settlement Administrator with a forwarding address before the
21 Response Deadline shall be promptly remailed to the forwarding address affixed
22 thereto. (¶9.A.3)

23 //

24 //

25 //

1 **2. Content of class notice.**

2 A copy of the proposed class notice is attached to the Settlement Agreement as
3 Exhibit A. The notice includes information such as: a summary of the litigation; the
4 nature of the settlement; the terms of the settlement agreement; the maximum
5 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
6 the enhancement award, and claims administration costs); the procedures and deadlines
7 for participating in, opting out of, or objecting to, the settlement; the consequences of
8 participating in, opting out of, or objecting to, the settlement; and the date, time, and
9 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
10 given in both English and Spanish (¶1.BB).

11 **3. Settlement Administration Costs**

12 Settlement administration costs are estimated at **\$10,750**, including the cost of
13 notice (¶1.BB). Prior to the time of the final fairness hearing, the settlement
14 administrator must submit a declaration attesting to the total costs incurred and
15 anticipated to be incurred to finalize the settlement for approval by the Court.

16
17 **E. ATTORNEY FEES AND COSTS**

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

23 Ultimately, the award of attorney fees is made by the court at the fairness
24 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
25 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*

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

9 The question of class counsel’s entitlement to **\$120,750** (35%) in attorney fees
10 will be addressed at the final fairness hearing when class counsel brings a noticed
11 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
12 the court with current market tested hourly rate information and billing information so
13 that it can properly apply the lodestar method and must indicate what multiplier (if
14 applicable) is being sought.

15 Class counsel should also be prepared to justify the costs sought (capped at
16 **\$25,000**) by detailing how they were incurred.

18 **F. SERVICE AWARD**

19 The Settlement Agreement provides for a service award of up to **\$7,500** for the
20 class representative. Trial courts should not sanction enhancement awards of thousands
21 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
22 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
23 quantification of time and effort expended on the litigation, and in the form of reasoned
24 explanation of financial or other risks incurred by the named plaintiffs, is required in
25 order for the trial court to conclude that an enhancement was ‘necessary to induce [the

1 named plaintiff] to participate in the suit” *Clark v. American Residential Services*
2 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

3 The Court will decide the issue of the enhancement award at the time of final
4 approval.

5
6
7 **V. CONCLUSION AND ORDER**

8 The Court hereby:

- 9 (1) Grants preliminary approval of the settlement as fair, adequate, and
10 reasonable;
- 11 (2) Grants conditional class certification;
- 12 (3) Appoints Carlos Enrique Perez as Class Representative;
- 13 (4) Appoints Bibiyan Law Group, P.C. as Class Counsel;
- 14 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
15 Administrator;
- 16 (6) Approves the proposed notice plan; and
- 17 (7) Approves the proposed schedule of settlement proceedings as follows:
- 18 ● Preliminary approval date: June 16, 2023
 - 19 ● Deadline for Defendant to provide class list to settlement administrator: June 30,
20 2023 (within 14 calendar days from preliminary approval)
 - 21 ● Deadline for settlement administrator to mail notices: July 7, 2023 (within 7
22 calendar days from receipt of the class list)
 - 23 ● Deadline for class members to opt out: August 19, 2023 (45 calendar days from
24 the initial mailing of the Notice Packets)
- 25

- 1 • Deadline for class members to object: August 21, 2023 (45 calendar days from
- 2 the initial mailing of the Notice Packets)
- 3 • Deadline for class counsel to file motion for final approval: September 27, 2023
- 4 (16 court days prior to final fairness hearing)
- 5 • Final fairness hearing: October 19, 2023, at 9:00 a.m.

6
7 Dated:

6/16/23



8 MAREN E. NELSON

9 Judge of the Superior Court

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