

FILED
Superior Court of California
County of Los Angeles

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

CHRISTINA VEGA, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

LAMSCO WEST, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21STCV38069

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

I. BACKGROUND

Plaintiff Christina Vega sues her former employer, Defendant Lamsco West, Inc., for alleged wage and hour violations. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

1 On October 14, 2021, Plaintiff filed a complaint alleging causes of action for: (1)
2 Unpaid Overtime (Labor Code §§ 510 and 1198); (2) Unpaid Meal Period Premiums
3 (Labor Code §§ 226.7 and 512(a)); (3) Unpaid Rest Period Premiums (Labor Code §
4 226.7); (4) Unpaid Minimum Wages (Labor Code §§ 1194 and 1197); (5) Final Wages
5 Not Timely Paid (Labor Code §§ 201 and 202); (6) Non-Compliant Wage Statements
6 (Labor Code § 226(a)); (7) Unreimbursed Business Expenses (Labor Code §§ 2800 and
7 2802); and (8) Violation of California Business & Professions Code §§ 17200, et seq.

8 On June 15, 2022, the parties attended mediation before mediator Hon. Lesley
9 Green (Ret.), which resulted in settlement. The terms were finalized in the Class
10 Action Settlement Agreement, a copy of which is attached to the Declaration of
11 Douglas Han (Han Decl.”) as Exhibit 2.

12 The matter came on for hearing on August 15, 2023 for preliminary approval of
13 the settlement, at which time counsel confirmed Defendant’s ability to make the
14 payments referenced below and agreed to file supplemental papers and a revised
15 settlement agreement, which papers were filed August 30, 2023, together with an
16 Amended Agreement and Notice, attached to the Declaration of 3 and 4 to the
17 Supplemental Declaration of Douglas Han. All references below are to that agreement.

18
19 **II. THE TERMS OF THE SETTLEMENT**

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

21 “Class” means all current and former hourly-paid or non-exempt employees
22 hired directly by Defendant within the State of California at any time during the Class
23 Period. The Class also includes temporary workers provided by Partners Personnel –
24 Management Services, LLC to Defendant during the Class Period. (¶1.4)

1 "Class Period" means the period from October 14, 2017, through June 30, 2022.

2 (¶1.11)

3 Class Size Estimates: Based on its records, Defendant estimates that, as of the
4 date of the Settlement Agreement, there are approximately 213 Class Members,
5 including 187 directly hired employees and 26 temporary employees provided by
6 Partners Personnel – Management Services, LLC, and 27,595 workweeks for the
7 directly hired Class Members during the Class Period. The Parties are informed that the
8 temporary employees provided by Partners Personnel – Management Services, LLC
9 worked a total of 201 workweeks for Defendant during the Class Period. (¶9)

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

12 The essential monetary terms are as follows:

- 13 • The Gross Settlement Amount (“GSA”) is **\$325,000** (¶3.1).
- 14 • The Net Settlement Amount (“Net”) (**\$176,666.67**) is the GSA less:
 - 15 ○ Up to **\$108,333.33** (33 1/3%) for attorney fees (¶3.2.2);
 - 16 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
 - 17 ○ Up to **\$10,000** for a service award to the proposed class representative
18 (¶3.2.1); and
 - 19 ○ Up to **\$10,000** for settlement administration costs (¶3.2.3).
- 20 • Defendant will separately pay any and all employer payroll taxes owed on the
21 Wage Portions of the Individual Class Payments (¶3.1).
- 22 • Assuming the Court approves all maximum requested deductions, approximately
23 \$176,666.67 will be available for automatic distribution to participating class
24 members. Assuming full participation, the average settlement share will be
25 approximately \$829.42. ($\$176,666.67 \text{ Net} \div 213 \text{ class members} = \829.42).

- 1 • There is no Claim Requirement (§3.1).
- 2 • The settlement is not reversionary (§3.1).
- 3 • Individual Settlement Share Calculation: Each Participating Class Member's
- 4 Individual Class Payment will be calculated by (a) dividing the Net Settlement
- 5 Amount by the total number of Workweeks worked by all Participating Class
- 6 Members during the Class Period and (b) multiplying the result by the number of
- 7 Workweeks worked by the Participating Class Member during the Class Period.
- 8 (§3.2.4) Non-Participating Class Members will not receive any Individual Class
- 9 Payments. The Administrator will retain amounts equal to their Individual Class
- 10 Payments in the Net Settlement Amount for distribution to Participating Class
- 11 Members on a pro-rata basis. (§3.2.4.2)
- 12 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
- 13 will be allocated as 20% to wages; 80% to interest and penalties (§3.2.4.1). The
- 14 Administrator will issue IRS 1099 Forms to those Class Members provided by
- 15 Partners Personnel – Management Services, LLC to Defendant during the Class
- 16 Period for their Individual Class Payments. (*Ibid.*)
- 17 • Funding of Settlement: Defendant will put \$27,083.33 into an escrow account
- 18 held in trust by the Administrator on the first of each month for 11 months,
- 19 beginning seven days after the Court grants Final Approval and a twelfth
- 20 payment of \$27,083.37, totaling \$325,000. (§4.3)
- 21 • Distribution: Within 14 days after Defendant fully funds the Gross Settlement
- 22 Amount, the Administrator will mail checks for all Individual Class Payments,
- 23 the Administration Expenses Payment, the Class Counsel Fees Payment, the
- 24 Class Counsel Litigation Expenses Payment, and the Class Representative
- 25 Service Payment. Disbursement of the Class Counsel Fees Payment, the Class

1 Counsel Litigation Expenses Payment and the Class Representative Service
2 Payment shall not precede disbursement of Individual Class Payments. (§4.4)

- 3 • Uncashed Settlement Payment Checks: The face of each check shall prominently
4 state the date (180 days after the date of mailing) when the check will be voided.
5 (§4.4.1) For any Class Member whose Individual Class Payment check is
6 uncashed and cancelled after the void date, the Administrator shall transmit the
7 funds represented by such checks to the California Controller's Unclaimed
8 Property Fund in the name of the Class Member thereby leaving no "unpaid
9 residue" subject to the requirements of California Code of Civil Procedure
10 Section 384, subd. (b). (§4.4.3)

11 12 **C. TERMS OF RELEASES**

- 13 • Releases of Claims: Effective on the date when Defendant fully funds the entire
14 Gross Settlement Amount and funds all employer payroll taxes owed on the
15 Wage Portions of the Individual Class Payments, Plaintiffs, Participating Class
16 Members, and Class Counsel will release claims against the Released Parties as
17 follows: (§5)
- 18 • Release by Participating Class Members: All Participating Class Members
19 release the Released Parties from all claims that were alleged, or reasonably
20 could have been alleged, based on the factual allegations and legal assertions
21 made in the Operative Complaint, including any and all claims for unpaid
22 overtime wages, unpaid meal and rest period premiums, unpaid minimum wages,
23 final wages not timely paid, non-compliant wage statements, unreimbursed
24 business expenses, and violation of California Business & Professions Code
25 section 17200, *et seq.*, that arose during the Class Period. The release does not

1 include claims, that as a matter of law cannot be released and does not include
2 claims for retaliation, discrimination, wrongful termination, and individual
3 claims for the recovery of workers' compensation benefits. (¶5.2)

- 4 • "Released Parties" means Defendant Lamsco West, Inc., Partners Personnel –
5 Management Services, LLC, and their current and former officers, directors,
6 managing agents, agents, representatives, attorneys, insurers, reinsurers,
7 investors, parent company (including Avantus Aerospace), shareholders, and
8 administrators. (¶1.30)
- 9 • The named Plaintiff will also provide a general release and a waiver of the
10 protections of Cal. Civ. Code §1542. (¶5.1)
- 11 • The releases are effective on the date when Defendant fully funds the entire
12 Gross Settlement Amount, which should occur approximately 12 months after
13 the Court grants Final Approval. (¶4.3)

14 15 **D. SETTLEMENT ADMINISTRATION**

- 16 • The proposed Settlement Administrator is Phoenix Class Action Administration
17 Solutions (¶1.2), which has provided evidence that no counsel are affiliated with it
18 and that it has adequate procedures in place to safeguard the data and funds to be
19 entrusted to it. (See Declaration of Jodey Lawrence.)
- 20 • Settlement administration costs are estimated to be \$8,250 (Lawrence Decl. ¶16)
21 and are capped at \$10,000 in the settlement agreement (¶3.2.3).
- 22 • Notice: The manner of giving notice is described below.
- 23 • Opt Out/Objection Dates: "Response Deadline" means 60 days after the
24 Administrator mails Notice to Class Members and shall be the last date on which
25 Class Members may: (a) fax, email, or mail Requests for Exclusion from the

1 Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class
2 Members to whom Notices are resent after having been returned undeliverable to
3 the Administrator shall have an additional fourteen 14 calendar days beyond the
4 Response Deadline has expired. (§1.32) The same deadline applies to the
5 submission of workweek disputes. (§7.6)

- 6 • Notice of Final Judgment will be posted on the Settlement Administrator’s website
7 (§7.8.1).

9 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

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

1 agreement to the extent necessary to reach a reasoned judgment that the agreement is
2 not the product of fraud or overreaching by, or collusion between, the negotiating
3 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
4 concerned.”] [internal quotation marks omitted].

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

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

1 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
2 245.

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

10
11 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

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

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

15
16 **1. The settlement was reached through arm’s-length bargaining**

17 On June 15, 2022, the parties attended mediation before mediator Hon. Lesley
18 Green (Ret.), which resulted in a settlement in principle. (Han Decl. ¶11.) On January
19 18, 2023, Defense Counsel revealed that Defendant’s financial situation had worsened,
20 and after Defendant produced financial documents for Plaintiff’s expert’s analysis, the
21 parties renegotiated and reached the present settlement on March 3, 2023. (*Id.* at ¶¶12-
22 13.)

23 //

24 //

25 //

2. The investigation and discovery were sufficient

1
2 Plaintiff's counsel represents that prior to litigation, Defendant produced
3 employee handbooks and documents pertaining to its wage-and-hour policies, practices,
4 and procedures, including those regarding meal and rest breaks, overtime, and its
5 timekeeping, payroll, and operational policies. Defendant assembled and produced a
6 random sampling of time and pay records, information relating to the size and scope of
7 the Class, as well as data permitting Plaintiff to understand the number of workweeks
8 and pay periods in the Class Period. Class Counsel also interviewed putative class
9 members about the alleged violations. (*Id.* at ¶16.) As to the sampling, Defendant
10 provided Plaintiff with a random sampling of time and pay records for 51 of the 213
11 employees that make up the Class, which constitutes an approximately twenty-four
12 (24%) sample of the Class. The sample sized used utilized a ten percent (10%) margin
13 of error and a confidence level of eighty-nine and a half percent (89.5%), which counsel
14 asserts is within the acceptable margin of error. (*Id.* at ¶45.) This sampling of time and
15 pay records covers the time period from October 15, 2018, through October 15, 2021,
16 and Plaintiff's expert extrapolated the data Defendant produced to the Class Period.
17 (*Ibid.*)

18 Following mediation, Defendant produced documents pertaining to its financial
19 condition, including internal financial statements, tax returns, loan documents, annual
20 general ledgers, an accounts payable aging report, and an accounts receivable aging
21 report, among other things. (*Id.* at ¶17.) Plaintiff retained an expert who analyzed the
22 financial documents Defendant produced. (*Id.* at ¶12.) Defendant's President, Kurt
23 Nanney, represents that the proposed settlement funding plan is necessary due to
24 revenue losses the company incurred after losing business from its main client, Boeing,
25 and inability to secure alternate non-core business. (See Declaration of Kurt Nanney.)

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

2
3 **3. Counsel is experienced in similar litigation**

4 Class Counsel represent that they are experienced in class action litigation,
5 including wage and hour class actions. (Han Decl. at Exhibit 1.)
6

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

8 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
9 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
10 the court receive objections to the proposed settlement, it will consider and either sustain
11 or overrule them at the fairness hearing.”].
12

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

15 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
16 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
17 does when it approves a settlement as in good faith under Code of Civil Procedure
18 section 877.6, the court must at least satisfy itself that the class settlement is within the
19 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
20 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
21 consider and weigh the nature of the claim, the possible defenses, the situation of the
22 parties, and *the exercise of business judgment* in determining whether the proposed
23 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
24 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).
25

1 **1. Amount Offered in Settlement**

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

4 Class Counsel estimated Defendant’s maximum exposure at \$4,119,704.24 and
5 realistic exposure at \$853,977.62, based on the following analysis:

6 Violation	Maximum Exposure	Realistic Exposure
7 Rest Break Violations	\$552,975.55	\$66,357.07
8 Meal Break Violations	\$782,172.47	\$156,434.49
9 Underpaid Hours Due to Rounding	\$113,202.42	\$39,620.85
10 Unpaid Wages at Overtime Rate	\$1,498,204.40	\$299,640.88
11 Unpaid Bonuses	\$16,446.00	\$6,907.32
12 Expense Reimbursements	\$103,971.00	\$21,833.91
13 Wage Statement Penalties	\$476,250.00	\$119,062.50
14 Waiting Time Penalties	\$576,482.40	\$144,120.60
15 Total	\$4,119,704.24	\$853,977.62

16 (Han Decl. ¶¶47-64.)

17 Class Counsel obtained a gross settlement valued at \$325,000. This is
18 approximately 7.9% of Defendant’s maximum exposure and 38% of Defendant’s realistic
19 exposure.

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

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

1 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
2 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
3 conducting class actions, which means, under suitable circumstances, entertaining
4 successive motions on certification if the court subsequently discovers that the propriety
5 of a class action is not appropriate.”].) Further, the settlement was negotiated and
6 endorsed by Class Counsel who, as indicated above, are experienced in class action
7 litigation. Based upon their investigation and analysis, the attorneys representing
8 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
9 adequate. (Han Decl. ¶64.)

10 11 **3. The Releases Are Limited**

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

17 18 **4. Conclusion**

19 Class Counsel estimated Defendant’s maximum exposure at \$4,119,704.24 and
20 realistic exposure at \$853,977.62. Class Counsel obtained a gross settlement valued at
21 \$325,000. This is approximately 7.9% of Defendant’s maximum exposure and 38% of
22 Defendant’s realistic exposure, including the potential that the class might not be
23 certified, that liability is a contested issue, and that the full amount of penalties would not
24 necessarily be assessed even if the class is certified and liability found, and that
25 Defendant is in an impaired financial condition which raises a doubt as to whether a large

1 judgment could be collected on behalf of the class, the settlement is within the “ballpark
2 of reasonableness.”

3
4 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

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

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

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

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

13 There are approximately 213 putative Class Members. (Han Decl. ¶66.)
14 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
15 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
16 *parties to a class action is liberally construed,*” and citing examples wherein classes of
17 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
18 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

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

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

1 The class is defined above. Class Members are ascertainable through
2 Defendant's records. (Han Decl. ¶66)

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

4 "The community of interest requirement involves three factors: '(1) predominant
5 common questions of law or fact; (2) class representatives with claims or defenses typical
6 of the class; and (3) class representatives who can adequately represent the class.'"

7 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

8 As to predominant questions of law or fact, Plaintiff contends that all Class
9 Members were subject to the same or similar employment practices, policies, and
10 procedures. Plaintiff's claims surround Defendant's alleged common practices and
11 schemes of failing to maintain compliant meal and rest break policies and practices,
12 failing to reimburse business expenses, and failing to fully and properly compensate
13 employees for, inter alia, noncompliant meal and rest breaks, all hours worked, including
14 off-the-clock work and overtime work, and associated wage statement and waiting time
15 penalties. (Han Decl. ¶67.)

16 As to typicality, Plaintiff is a former employee of Defendant and alleges that she
17 and the Class Members were employed by the same company and injured by Defendant's
18 common policies and practices related to: (a) improper meal and rest breaks and
19 associated unpaid premium wages; (b) rounding; (c) uncompensated off-the-clock work;
20 (d) improperly calculated and underpaid overtime and premium wages and sick pay; (e)
21 unreimbursed business expenses; (f) untimely paid wages; and (g) inaccurate wage
22 statements. Plaintiff seeks relief for these claims and derivative claims on behalf of all
23 Class Members. (*Id.* at ¶68.)

24 As to adequacy, Plaintiff represents that she has participated in the litigation and is
25 aware of the risks and duties of serving as class representative. (Declaration of Christina

1 Vega ¶¶10-18.) As previously stated, Class Counsel have experience in class action
2 litigation.

3
4 **4. Substantial Benefits Exist**

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

7
8 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
9 OF DUE PROCESS**

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

18 **1. Method of class notice**

19 Not later than 15 days after the Court grants Preliminary Approval of the
20 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator,
21 in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as
22 soon as possible, and in no event later than 14 days after receiving the Class Data, the
23 Administrator will send to all Class Members identified in the Class Data, via First-
24 Class USPS mail, the Class Notice with Spanish translation. Before mailing Class
25

1 Notices, the Administrator shall update Class Member addresses using the National
2 Change of Address database. (§7.4.2)

3 Not later than three business days after the Administrator's receipt of any Class
4 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
5 Notice using any forwarding address provided by the USPS. If the USPS does not
6 provide a forwarding address, the Administrator shall conduct a Class Member Address
7 Search, and re-mail the Class Notice to the most current address obtained. The
8 Administrator has no obligation to make further attempts to locate or send Class Notice
9 to Class Members whose Class Notice is returned by the USPS a second time. (§7.4.3)

10 The deadlines for Class Members' written objections, challenges to number of
11 Workweeks worked, and Requests for Exclusion will be extended an additional 14 days
12 beyond the 60 days otherwise provided in the Class Notice for all Class Members
13 whose notice is re-mailed. The Administrator will inform the Class Member of the
14 extended deadline with the re-mailed Class Notice. (§7.4.4)

15 **2. Content of class notice.**

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

25 //

1 **3. Settlement Administration Costs**

2 Settlement administration costs are capped at **\$10,000**, including the cost of
3 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement
4 administrator must submit a declaration attesting to the total costs incurred and
5 anticipated to be incurred to finalize the settlement for approval by the Court.
6

7 **E. ATTORNEY FEES AND COSTS**

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

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

24 The question of class counsel’s entitlement to **\$108,333.33** (33 1/3%) in attorney
25 fees will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
2 the court with current market tested hourly rate information and billing information so
3 that it can properly apply the lodestar method and must indicate what multiplier (if
4 applicable) is being sought.

5 Class counsel should also be prepared to justify the costs sought (capped at
6 **\$20,000**) by detailing how they were incurred.

7 8 **F. SERVICE AWARD**

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

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

21 22 **V. CONCLUSION AND ORDER**

23 The Court hereby:

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

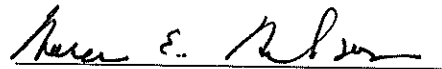
1 (2) Grants conditional class certification;
2 (3) Appoints Christina Vega as Class Representative;
3 (4) Appoints Justice Law Corporation as Class Counsel;
4 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
5 Administrator;

6 (6) Approves the proposed notice plan; and

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

- 8 • Preliminary approval date: August 30, 2023
- 9 • Deadline for Defendant to provide class list to settlement administrator:
10 September 14, 2023 (within 15 days from preliminary approval)
- 11 • Deadline for settlement administrator to mail notices: September 28, 2023
12 (within 14 days after receiving the Class Data)
- 13 • Deadline for class members to opt out: November 27, 2023 (60 calendar days
14 from the initial mailing of the Notice Packets)
- 15 • Deadline for class members to object: November 27, 2023 (60 calendar days
16 from the initial mailing of the Notice Packets)
- 17 • Deadline for class counsel to file motion for final approval: January 8, 2024 (16
18 court days prior to final fairness hearing)
- 19 • Final fairness hearing: January 31, 2024 at 9:00 a.m.

20
21 Dated: 8/30/2023



22 MAREN E. NELSON

23 Judge of the Superior Court
24
25