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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

10 ERIK MARTINEZ on behalf of himself, all
11 others similarly situated, and on behalf of
12 the general public,

13 Plaintiffs,

14 v.

15 PATRICK INDUSTRIES, INC.; and DOES
16 1-100,

17 Defendants.

Case No. CIVDS2009663

*[Assigned for All Purposes to the Hon. David S.
Cohn, Dept. S-26]*

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: July 5, 2022
Time: 10:00 a.m.

Complaint Filed: June 1, 2020
Trial Date: None Set

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action (the “Action”). Plaintiff
3 Erik Martinez has applied to this Court for an order preliminarily approving the settlement of the Action
4 in accordance with the Settlement Agreement (the “Agreement”), which together with the exhibits
5 annexed thereto, sets forth the terms and conditions for a proposed settlement and entry of judgment upon
6 the terms and conditions set forth therein. The Court has read and considered the Memorandum of Points
7 and Authorities in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement,
8 Conditional Certification, Approval of Class Notice, Setting of Final Approval Hearing Date; the
9 Declaration of David Mara, Esq., in Support of Plaintiff’s Motion for Preliminary Approval of Class
10 Action Settlement, and attached exhibits. For purposes of this Order, the Court adopts all defined terms
11 as set forth in the Agreement.

12 **II. FINDINGS**

13 After review and consideration of the Agreement and Plaintiff’s motion for preliminary approval
14 and the papers in support thereof, the Court hereby finds and orders as follows:

- 15 1. The Agreement falls within the range of reasonableness meriting possible final approval.
- 16 2. The certification of the Class solely for purposes of settlement is appropriate in that: (1)
17 the Class Members are ascertainable and so numerous that joinder of all Class Members is impracticable;
18 (2) there are questions of law and fact common to the Class which predominate over any individual
19 questions; (3) Plaintiff’s claims are typical of the claims of the Class; (4) Plaintiff and his Counsel have
20 fairly and adequately represented and protected the interests of the Class; and (5) a class action, and class-
21 wide resolution of the action via class settlement procedures is superior to other available methods for the
22 fair and efficient adjudication of the controversy.
- 23 3. The Agreement, and the obligations of the Parties as set forth therein, is fair, reasonable,
24 and is an adequate settlement of this case and is in the best interests of the Class in light of the factual,
25 legal, practical, and procedural considerations raised by this case.
- 26 4. Plaintiff does not have any conflicts that would preclude him from serving as Class
27 Representative, and his appointment comports with the requirements of due process.
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1 5. Class Counsel does not have any conflicts that would preclude them from acting as Class
2 Counsel, and they meet the requirements for appointment as Class Counsel and the requirements of due
3 process.

4 6. The notice of proposed class action settlement attached as Exhibit 1 to the Agreement
5 complies with due process because the notice of proposed class action settlement is reasonably calculated
6 to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the terms of the proposed Agreement;
7 and (iii) their rights, including the right to either participate in the settlement, exclude themselves from
8 the settlement, or object to the settlement. Plaintiff's proposed plan for class notice and settlement
9 administration is the best notice practicable under the circumstances.

10 **III. ORDER**

11 The Court having considered the papers submitted in support of the motion for preliminary
12 approval, HEREBY ORDERS THE FOLLOWING:

13 1. The Court finds on a preliminary basis that the provisions of the Agreement are fair, just,
14 reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

15 2. The following Class is conditionally certified for purposes of settlement only: All non-
16 exempt employees of Defendant who worked in California from June 1, 2016 through June 10, 2022.

17 3. The Agreement provides for the following release as to Participating Class Members,¹
18 which is hereby approved conditionally: The Released Claims applicable to Plaintiff and all Participating
19 Class Members shall mean: any and all claims, debts, liabilities, demands, obligations, penalties,
20 guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or
21 nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have
22 arisen out of the same facts alleged in the Complaint, against the Released Parties and any and all Doe
23 defendants. The Released Claims include, but are not limited to, 1) Failure to Pay All Straight Time
24 Wages and/or Minimum Wages; 2) Failure to Pay All Overtime Wages; 3) Failure to Provide Meal
25 Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 5- 2001(11); Cal. Code Regs., tit. 8 § 11050);
26 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5- 2001(12);

27 ¹ Participating Class Members are Class Members who have not timely requested exclusion from the
28 Settlement.

1 Cal. Code Regs. tit. 8 § 11050); 5) Knowing and Intentional Failure to Comply with Itemized Employee
2 Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175); 6) Failure to Pay All Wages Due at the
3 Time of Termination of Employment (Lab. Code §§ 201-203); and 7) Violation of Unfair Competition
4 Law (Bus. & Prof. Code § 17200, et seq.). This release will be for the Class Period. PAGA Aggrieved
5 Employees will also release any claims under the Private Attorneys General Act, Labor Code §2699, et
6 seq. as described in the Agreement.

7 3. The settlement appears to be fair, adequate and reasonable to the Class. The settlement falls
8 within the range of reasonableness and appears to be presumptively valid, subject only to any objections
9 that may be raised at the final approval hearing and final approval by this Court.

10 4. Plaintiff Erik Martinez is conditionally approved as the Class Representative for the Class.

11 5. The proposed Class Representative Enhancement Payment of \$7,500, payable to Erik
12 Martinez for his services as class representative is conditionally approved.

13 6. Mara Law Firm, PC is conditionally approved as Class Counsel for the Class.

14 7. The proposed awards of up to \$599,940 in attorneys' fees and up to \$30,000 in actual costs
15 payable to Class Counsel are conditionally approved.

16 8. A final approval hearing on the question of whether the settlement, attorneys' fees and
17 costs to Class Counsel, and the Class Representative Enhancement Payments should be finally approved
18 as fair, reasonable and adequate as to Class Members is scheduled in Department S26 on the date and time
19 set forth in the Implementation Schedule below.

20 9. The Court confirms Phoenix Class Action Administration Solutions as the Settlement
21 Administrator.

22 10. The proposed payment of up to \$15,000 in costs to Phoenix Class Action Administration
23 Solutions for its services as the Settlement Administrator is conditionally approved.

24 11. The Court also hereby conditionally approves and orders payment from the Gross
25 Settlement Amount of the PAGA Payment of \$75,000 (75% of which shall be paid to the Labor and
26 Workforce Development Agency, and 25% of which shall be distributed to the PAGA Aggrieved
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Employees²).

12. The Court approves, as to form and content, the notice of class action settlement in substantially the form attached as Exhibit A to the Agreement. The Court approves the procedure for Class Members to participate in, to opt out of, and to object to, the settlement as set forth in the notice.

13. The Court directs the mailing of the notice of class action settlement by first class mail to Class Members in accordance with the Implementation Schedule below. The Court finds the dates selected for the mailing and distribution of the notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

14. To facilitate administration of the settlement pending final approval, the Court hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or administrative proceedings (including, but not limited to, filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations) regarding claims released by the Agreement unless and until such Class Members have filed valid Requests for Exclusion with the Settlement Administrator and the time for filing valid Requests for Exclusion with the Settlement Administrator has elapsed. This provision shall not apply to claims not alleged in the Action.

IV. IMPLEMENTATION SCHEDULE

The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to submit Class Data to Settlement Administrator:	July 26, 2022 [15 business days after entry of this Order]
Deadline for Settlement Administrator to Mail the Class Notice to Class Members	August 9, 2022 [14 calendar days after receipt of the Class List and Data]

² PAGA Aggrieved Employees are Class Members who worked for Defendant in California at any time from February 19, 2019 through June 10, 2022.

Deadline for Class Members to Postmark Requests for Exclusion or Objections	September 8, 2022 [30 calendar days after mailing of Notice to Class Members]
Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment	16 court days before Final Approval Hearing
Final Approval Hearing and Final Approval	_____, 2022, at _____

IT IS SO ORDERED.

Dated: _____, 2022

By _____
Honorable David Cohn
San Bernardino County Superior Court Judge