

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

*Attorney for Plaintiff and the other
Aggrieved Employees*

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 28 2021

BY 
JESSICA MORALES, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

PATTY RUVALCABA, individually, and
on behalf of all other aggrieved employees,

Plaintiff,

v.

EM KMR LLC, a California limited liability
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CIVDS 2008937

[Hon. David Cohn, Dept. S-26]

**[PROPOSED] ORDER AND JUDGMENT
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA") SETTLEMENT**

1 **[PROPOSED] ORDER AND JUDGMENT APPROVING SETTLEMENT PURSUANT**
2 **TO PRIVATE ATTORNEY GENERALS ACT ("PAGA")**

3 Plaintiff now seeks an Order and Judgment granting approval of a Private Attorneys
4 General Act (Labor Code §2699 Et. Seq.) Settlement Agreement ("PAGA"), as follows:

5 Plaintiff filed an unopposed Motion for Approval of the Settlement Agreement Pursuant to
6 the Private Attorneys General Act ("PAGA") Labor Code § 2698, et seq., and supporting
7 documents. The Court, having considered the proposed Settlement Agreement, as well as all
8 papers filed in support of Plaintiff's Motion for Approval of Settlement Pursuant to the Private
9 Attorneys General Act ("PAGA"), hereby ORDERS, ADJUDGES, AND DECREES AS
10 FOLLOWS:

11 1. This Court has jurisdiction over the subject matter of the action and over all Parties
12 to the action, including the aggrieved employees.

13 2. The Settlement is in all respects fair, reasonable, and adequate, and it is hereby
14 approved.

15 3. The PAGA period, defined as "All non-exempt employees who worked for
16 Defendant in the State of California from March 17, 2019 through the date of this order is approved
17 for settlement purposes and filed with the Court.

18 4. The Notice that will be provided to the aggrieved employees with the California
19 and United States Constitutions, and any other applicable law, and constitutes the best notice
20 practicable under the circumstances, by providing individual notice to all aggrieved employees
21 who could be identified through reasonable effort, and by providing due and adequate notice of
22 the proceedings and of the matters set forth therein to the aggrieved employees. The Notice fully
23 satisfies the requirements of due process.

24 5. The Court finds the Settlement was entered into in good faith, that the Settlement
25 is fair, reasonable, and adequate.

26 6. As set forth in the Declaration of Scott Ernest Wheeler, as counsel for Plaintiff,
27 notice of the Private Attorneys General Act (Labor Code §2698, et seq.) Settlement Agreement
28 has been submitted to the California Labor and Workforce Development Agency as provided by

1 law.

2 7. Upon entry of this Order, compensation to the aggrieved employees shall be
3 effected pursuant to the terms of the Settlement Agreement.

4 8. In addition to any recovery that Plaintiff may receive as an aggrieved employee
5 under the Settlement, and in recognition of Plaintiff's efforts on behalf of the PAGA Settlement,
6 the Court hereby approves the payment of a representative enhancement award to Plaintiff, Patty
7 Ruvalcaba in the amount of \$5,000 for her services as the representative, and Settlement
8 Administrator shall cause this sum to be paid to Plaintiff in accordance with the terms of the
9 Settlement Agreement.

10 9. The Court finds that PAGA Counsel's requested itemized litigation expenses in the
11 amount of \$9,385.48 are reasonable and are hereby approved by the Court.

12 10. The Court finds that the requested attorneys' fees are reasonable under the
13 percentage of the fund method. *See Laffitte v. Robert Half Internat, Inc.* (2016) 1 Cal.5th 480, 503.
14 Specifically, the Gross Settlement Fund of \$175,000.00 represents a true common fund, as there
15 is no claims process and no money under the Settlement will revert to Defendant. The Court finds
16 that thirty-three and 1/3 percent of the common fund, or \$58,275, is fair, reasonable and
17 appropriate. The Court has also reviewed the Declaration of Scott Ernest Wheeler and finds that
18 PAGA Counsel has incurred a lodestar of \$112,762.50. The Court finds that the hours PAGA
19 Counsel dedicated to litigating this case, and his requested hourly rates, are fair, reasonable and
20 appropriate. Accordingly, the Court finds that that PAGA Counsel has incurred a lodestar of
21 \$112,762.50. Thus, the requested attorneys' fees of \$58,275 are also reasonable under the lodestar
22 method with a negative multiplier of approximately 1.92, or nearly a 49% reduction to PAGA
23 Counsel's lodestar.

24 11. The Court approves the payment of attorney's fees to PAGA Counsel in the amount
25 of \$58,275 and reimbursement of reasonable litigation expenses in the amount of \$9,385.48 and
26 Defendant shall cause these sums to be paid to PAGA Counsel in accordance with the terms of the
27 Settlement Agreement.

28 12. The Court appoints Phoenix Settlement Administrators ("Phoenix") as the PAGA

1 Settlement Administrator, and the payment of actual settlement administration costs in the amount
2 of \$2,585.00 to Phoenix is approved, and Defendant shall cause this sum to be paid to Phoenix in
3 accordance with the terms of the Settlement Agreement.

4 13. The Court approves and orders payment in the amount of \$74,819.64 (which
5 represents 75% of the \$99,759.52 allocated for the PAGA payment after subtracting the attorney's
6 fees and costs, representative award and settlement administration costs) to the California Labor
7 and Workforce Development Agency ("LWDA"), which represents a fair and equitable sum for
8 resolution of claims raised pursuant to California Labor Code section 2698 *et seq.*, and Defendant
9 shall cause this sum to be paid to the LWDA in accordance with the terms of the Settlement
10 Agreement.

11 14. The Court approves and orders payment in the amount of \$24,939.88 (which
12 represents 25% of the allocated for the \$99,759.52 allocated for the PAGA payment after
13 subtracting the attorney's fees and costs, representative award and settlement administration costs)
14 to Plaintiff and the other aggrieved employees, which represents a fair and equitable sum for
15 resolution of claims raised pursuant to California Labor Code section 2698 *et seq.*, and Defendant
16 shall cause this sum to be paid to the aggrieved employees in accordance with the terms of the
17 Settlement Agreement.

18 15. The Gross Settlement Fund, the Net Settlement Fund, and the methodology used to
19 calculate and pay each aggrieved employees individual settlement payment are fair and reasonable,
20 and the Court authorizes the Settlement Administrator to issue individual settlement payments to
21 each aggrieved employee in accordance with the terms of the Settlement Agreement.

22 16. Upon the Effective Date, the date of which the Court files this Order and Final
23 Judgment, Plaintiff and the aggrieved employees, shall have, by operation of this Order and the
24 accompanying Judgment, fully, finally, and forever released, relinquished, and discharged
25 Defendant from all Released Claims as defined by the terms of the Settlement.

26 17. Judgment in this matter is entered in accordance with the terms of the Settlement
27 Agreement, and this Order and Final Judgment against Defendant in favor of Plaintiff and the
28 aggrieved employees. This Judgment is intended to be a final disposition of the above captioned

1 action in its entirety, and is intended to be immediately appealable.

2 18. This Court shall retain jurisdiction with respect to all matters related to the
3 administration and consummation of the Settlement, to enforce the terms of the judgment, and any
4 and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including
5 but not limited to all matters related to the Settlement and the determination of all controversies
6 relating thereto.

7 19. An OSC re: compliance with the terms of the Settlement is set for 4.28.22
8 at 9:00 a.m. p.m. in Department S26. A report from Phoenix re: distribution of the Settlement
9 funds shall be filed by on or before 5 days before the hearing.

10 20. Plaintiff's Motion for Approval of the Private Attorneys General Act (Labor Code
11 § 2698, et seq.) Settlement Agreement is hereby granted and the Court directs that a judgment shall
12 be entered in accordance with the terms of this Order.

13 21. This document shall constitute a Judgment for purposes of California Rule of Court
14 3.769(h).

15 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

16 DATED: 4.28.21

17 **DAVID COHN**

18 _____
19 HONORABLE DAVID COHN
20 JUDGE OF THE SUPERIOR COURT
21
22
23
24
25
26
27
28