

FILED
Superior Court of California
County of Los Angeles

NOV 09 2021

SHERRI R. CARTER / EXECUTIVE OFFICER/CLERK
BY MARIBEL MATA Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEE'S CANDIES WAGE AND HOUR
CASES

Case No.: JCCP5004

Coordinated Actions:

Cristobal, et al. v. See's Candies, Inc., Case
Number 19STCV07389

Garcia v. See's Candies, Inc., Case Number
20-CIV-01633

Taylor v. See's Candy Shops, Incorporated,
Case Number 20STCV08372

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS

I. BACKGROUND

Plaintiffs Lauralynne Cristobal, Meisha Henry, Robert Taylor, and Allen Garcia
sue their employer, Defendants See's Candies, Inc. and See's Candy Shops, Inc.
(collectively, "Defendants") for alleged wage and hour violations. Defendants are a

1 manufacturer and distributor of candy. Plaintiffs seek to represent a class of
2 Defendants' current and former non-exempt employees.

3 On November 6, 2017, Plaintiff Cristobal filed a complaint against Defendant in
4 the Superior Court of the State of California, County of San Francisco (the "*Cristobal*
5 *Action*") alleging class claims for violations of California's Business and Professions
6 Code and Labor Code. On August 20, 2018, Plaintiffs Cristobal and Henry filed a First
7 Amended Complaint in the *Cristobal Action*, which added Henry as a plaintiff and
8 added a cause of action for the failure to provide accurate itemized statements in
9 violation of California Labor Code § 226. On July 3, 2019, Plaintiffs Cristobal and
10 Henry filed a Second Amended Complaint in the *Cristobal action* which added a cause
11 of action violation of the Private Attorneys General Act, Cal. Labor Code §§ 2698 et
12 seq. ("PAGA"), based upon the alleged Labor Code violations. On February 26, 2020,
13 a Third Amended Complaint was filed in the *Cristobal Action* adding a claim for
14 failure to provide suitable seating under PAGA. On July 6, 2020, a Fourth Amended
15 Complaint was filed in the *Cristobal Action* which added a cause of action for failure to
16 pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1.

17 On April 3, 2019, the *Cristobal Action* was coordinated with *Salazar v. See's*
18 *Candy Shops, Incorporated*. The coordinated action was assigned case number
19 JCCP5004 in the Superior Court of California, County of Los Angeles ("*See's Candies*
20 *Wage and Hour Cases*"). The *Cristobal Action* was transferred to the Superior Court of
21 California, County of Los Angeles.

22 On February 27, 2020, Plaintiff Taylor filed a complaint against Defendant See's
23 Candy Shops, Inc. in the Superior Court of California, County of Los Angeles ("*Taylor*
24 *Action*") which asserted a claim for civil penalties pursuant to PAGA against defendant
25 See's Candy Shops, Inc. On March 12, 2021, a petition to coordinate add-on case was

1 granted and the *Taylor* Action was added-on with the cases coordinated in the See's
2 Candies Wage and Hour Cases. On March 23, 2020, Plaintiff Garcia filed a Complaint
3 against Defendant See's Candies, Inc. in the Superior Court of California, County of
4 San Mateo ("*Garcia* Action") which asserted claims that Defendant See's Candies, Inc.
5 violated California Labor Code § 226, and sought damages and penalties on behalf of a
6 putative class of similarly situated employees as well as penalties under PAGA. On
7 August 24, 2020, the *Garcia* Action was added-on with the cases coordinated in the
8 *See's Candies Wage and Hour Cases*, and the *Garcia* Action was transferred to the
9 Superior Court of California, County of Los Angeles.

10 On December 17, 2020, the Parties participated in an all-day mediation presided
11 over by David Rotman, Esq. Following the mediation, the parties agreed to settle the
12 actions based on a mediator's proposal, which was memorialized in the form of a
13 Memorandum of Understanding. The terms of settlement are finalized in the *Class*
14 *Action Settlement Agreement* ("Settlement Agreement"), a copy of which was filed with
15 the Court.

16 On June 16, 2021, the Court issued a "checklist" to the parties pertaining to
17 deficiencies in the Settlement Agreement. In response, the parties filed supplemental
18 briefing, including the First Amended Settlement Agreement attached to the
19 Supplemental Declaration of Kyle Nordrehaug ("*Nordrehaug Decl.*") as Exhibit 1.

20 Now before the Court is Plaintiffs' motion for preliminary approval of the
21 settlement. For the reasons set forth below, the Court preliminarily grants approval for
22 the settlement on condition that the parties address the following:

- 23 1. ¶III.E.2.a states that the Class Data is to be confidential and that "No portion of
24 the Class Data will be provided to Plaintiffs or Class Counsel." Modify the
25 language to ensure that this confidentiality provision does not impair Class

Counsel's ability to act in best interests of the class, or otherwise brief why the current language is appropriate.

2. The Notice should inform the recipient of the estimated amounts of both the estimated settlement share as well as the estimated PAGA payment.

II. THE TERMS OF THE SETTLEMENT

A. SETTLEMENT CLASS AND RELATED DEFINITIONS

"Class" means all individuals who were employed by Defendants as non-exempt, non-retail manufacturing employees in California during the Class Period.

(¶I.B)

- "Class Period" means the period of time from November 6, 2013 to November 21, 2020. (¶I.I)
- "Participating Class Member" means a Class Member who does not submit a valid and timely Election Not to Participate in the Settlement. (¶I.Z)
- "Manufacturing Aggrieved Employees" means all individuals who were employed by Defendants as non-exempt, non-retail manufacturing employees during the Manufacturing PAGA Period. Lauralynne Cristobal, Allen Garcia, and Robert Taylor are the PAGA Representatives as to the Manufacturing Aggrieved Employees. (¶I.U).
 - "Manufacturing PAGA Period" means the period of time from October 23, 2017 to January 15, 2021. (¶I.V)
- "Retail Aggrieved Employees" means all individuals who were employed by Defendants in Defendants' retail shops in California and classified as non-exempt employees during the Retail PAGA Period. Meisha Henry is the PAGA

1 Representative as to the Retail Aggrieved Employees. (¶I.CC) The Retail
2 Aggrieved Employees are not part of the Class. (See Nordrehaug Decl. ¶33.)
3 Thus, Henry does not act as a class representative.

- 4 ○ “Retail PAGA Period” means the period of time from December 6, 2018
5 to January 2, 2021. (¶I.DD)

6 **B. THE MONETARY TERMS OF SETTLEMENT**

7 The essential monetary terms are as follows:

8 The Gross Settlement Amount (“GSA”) is **\$6,000,000** (¶I.S).

9 This includes payment of: (1) the Manufacturing PAGA Payment of **\$50,000** to be
10 paid 75% to the LWDA (\$37,500) and 25% to the Manufacturing Aggrieved Employees
11 (\$12,500) (¶III.B.3); and (2) the Retail PAGA Payment of **\$585,000** to be paid 75% to
12 the LWDA (\$438,750) and 25% to the Retail Aggrieved Employees (\$146,250)
13 (¶III.B.4).

14 The Net Settlement Amount (“Net”) (**\$3,220,000**) is the GSA less:

- 15 ○ Up to **\$2,000,000** (33 1/3%) for attorney fees (¶III.B.2);
 - 16 ○ Up to **\$50,000** for attorney costs (*Ibid.*);
 - 17 ○ Up to **\$40,000 total [\$10,000 each]** for service awards to the proposed
18 class representatives (¶III.B.1); and
 - 19 ○ Estimated **\$55,000** for settlement administration costs (¶III.B.5).
- 20 • Employer-side payroll taxes shall be separately paid by Defendants to the
21 Settlement Administrator. (¶III.A)
 - 22 • Assuming the Court approves all maximum requested deductions, approximately
23 \$3,230,000 will be available for automatic distribution to participating class
24 members. Assuming full participation, the average settlement share will be
25 approximately \$625.85. ($\$3,220,000 \text{ Net} \div 5,145 \text{ class members} = \625.85).

- Each Manufacturing Aggrieved Employee will receive a portion of the Manufacturing PAGA Payment, estimated to be \$3.36 per Manufacturing Aggrieved Employee. ($\$12,500$ or 25% of $\$50,000$ Manufacturing PAGA Payment $\div$ 3,712 Manufacturing Aggrieved Employees = $\$3.36$).
- Each Retail Aggrieved Employee will receive a portion of the Retail PAGA Payment, estimated to be \$27.29 per Retail Aggrieved Employee. ($\$146,250$ or 25% of $\$585,000$ Retail PAGA Payment $\div$ 5,359 Retail Aggrieved Employees = $\$27.29$). (See Supp. Nordrehaug Decl. ¶9.)
- There is no Claim Requirement (¶III.A).
- The settlement is not reversionary (¶III.A).
- Individual Settlement Share Calculation: The Settlement Share for each Participating Class Member will be calculated as follows: (i) Defendants shall provide the Settlement Administrator with the total number of workweeks worked as manufacturing employees for all Participating Class Members during the Class Period; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of workweeks worked by the Participating Class Members as manufacturing employees to determine a dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the number of weeks worked by each Participating Class Member as a manufacturing employee and multiply it by the Weekly Rate to calculate their Settlement Share. (¶III.C.2)
 - Effect of Non-Participating Class Members: Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will

1 remain a part of the Net Settlement Amount for distribution to
2 Participating Class Members on a pro rata basis relative to their
3 Settlement Shares. (§III.C.4)

4 ○ Manufacturing PAGA Payment: 25% (\$12,500) of the Manufacturing
5 PAGA Payment of \$50,000 will be distributed to the Manufacturing
6 Aggrieved Employees based on their respective workweeks worked
7 during the Manufacturing PAGA Period. (§III.B.3)

8 ○ Retail PAGA Payment: 25% (\$146,250) of the Retail PAGA Payment of
9 \$585,000 will be distributed to the Retail Aggrieved Employees based on
10 their respective workweeks worked during the Retail PAGA Period.
11 (§III.B.4)

- 12 • Tax Withholdings: 1/3 as wages, 1/3 as interest, 1/3 as penalties. (§III.C.3)
- 13 • Uncashed Settlement Payment Checks: A Participating Class Member must cash
14 his or her Settlement Share check within 180 days after it is last mailed to the
15 Participating Class Member. If a Participating Class Member's Settlement Share
16 check is not cashed within 120 days after its last mailing to the Participating
17 Class Member, the Settlement Administrator will also send the affected
18 Participating Class Member a notice stating that unless the check is cashed in the
19 next 60 days, it will expire and become non-negotiable, and offer to replace the
20 check if it was lost or misplaced but not cashed. If any check remains uncashed
21 by the expiration of this 60-day period, the Settlement Share of such uncashed
22 check will be paid to the California State Controller's Unclaimed Property Fund
23 in the name of the Participating Class Member, and the Participating Class
24 Member shall remain bound by the Settlement. The Parties agree that this
25 disposition results in no "unpaid residue" within the meaning of California Code

of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they all cash their Settlement Share checks. Checks to Manufacturing Aggrieved Employees and Retail Aggrieved Employees shall be handled in the same manner. (§III.E.10)

- Timing of Settlement Funding: Defendants shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendants shall fund the Gross Settlement Amount and the amount necessary to pay Defendants' share of payroll taxes within fifteen (15) calendar days after the Effective Date, and only if the Effective Date occurs. (§III.E.9)

- The "Effective Date" means the date by which the Settlement Agreement is approved by the Court, and the Judgment becomes Final. (§I.O)

C. TERMS OF RELEASES

- Participating Class Members. Upon full funding of the Gross Settlement Amount, the Released Parties shall receive a release from the Participating Class Members of any and all claims, demands, rights, liabilities and causes of action, including statutory, constitutional, contractual or common law claims, for wages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, whether known or unknown, arising during the Class Period from any Class Member's employment with any Released Party (a) for (i) failure to pay for all time worked; (ii) failure to pay regular, minimum or overtime wages; (iii) failure to provide proper meal and/or rest periods and/or associated premiums in lieu thereof; (iv) failure to timely pay wages due during employment or at termination or otherwise; (v) failure to furnish accurate wage statements; and (vi) to the extent not covered above, any

1 claims pled in or reasonably arising out of the facts alleged in Fourth Amended
2 Complaint in the *Cristobol* Action and/or the Complaint in the *Garcia* action; (b)
3 for statutory violations arising from the same categories of allegations set forth
4 in this section [¶III.F.1.a], including claims under the California Labor Code
5 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197 et
6 seq., any applicable California Industrial Welfare Commission Wage Orders,
7 and California Business & Professions Code sections 17200 et seq.; (c) for
8 penalties or liquidated damages or other available remedies arising from the
9 categories of allegations set forth above in Paragraph III.F.1.a, including claims
10 under the California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
11 512, 558, 1194, 1194.2, 1197 et seq., any applicable California Industrial
12 Welfare Commission Wage Orders, and California Business & Professions Code
13 sections 17200 et seq.; and (d) for interest, costs, or attorneys' fees arising from
14 the categories of allegations set forth above in ¶III.F.1.a, including claims under
15 California Labor Code sections 218.5, 1194, and 2699(g)(1) and California Code
16 of Civil Procedure section 1021.5 ("Released Class Claims"). (¶III.F.1)

- 17 ○ For avoidance of doubt, Released Class Claims expressly excludes all
18 other claims, including claims for vested benefits, wrongful termination,
19 unemployment insurance, disability, social security, and workers'
20 compensation, and claims arising outside of the Class Period. (*Ibid.*)
- 21 • Manufacturing Aggrieved Employees. Upon full funding of the Gross Settlement
22 Amount, the Released Parties shall receive a release from the Manufacturing
23 Aggrieved Employees and the State of California of any claims, demands, rights,
24 liabilities and causes of action arising under PAGA during the Manufacturing
25 PAGA Period from any Manufacturing Aggrieved Employee's employment with

1 any Released Party (a) for (i) failure to pay for all time worked; (ii) failure to pay
2 regular, minimum or overtime wages; (iii) failure to provide proper meal and/or
3 rest periods and/or associated premiums in lieu thereof; (iv) failure to timely pay
4 wages due during employment or at termination or otherwise; (v) failure to
5 furnish accurate wage statements; and (vi) to the extent not covered above, any
6 claims under PAGA only pled in or reasonably arising out of the facts alleged in
7 the Fourth Amended Complaint in the *Cristobal* Action, the Complaint in the
8 *Taylor* Action, the Complaint in the *Garcia* Action, and/or in Plaintiffs'
9 Cristobol, Garcia, and Taylor's LWDA pre-filing letter notices to the LWDA
10 regarding claims under PAGA; (b) for penalties or other available remedies
11 available under PAGA arising from the categories of allegations set forth above
12 in Paragraph III.F.2.a, including remedies available under PAGA for alleged
13 violation of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
14 512, 558, 1194, 1194.2, 1197 et seq., and any applicable California Industrial
15 Welfare Commission Wage Orders; and (c) for interest, costs, or attorneys' fees
16 available under PAGA arising from the categories of allegations set forth above
17 in Paragraph III.F.2.a, including under California Labor Code sections 218.5,
18 1194, and 2699(g)(1) and California Code of Civil Procedure section 1021.5
19 ("Manufacturing Released PAGA Claims"). (§III.F.2)

- 20 ○ For avoidance of doubt, Manufacturing Released PAGA Claims shall
21 exclude PAGA claims arising outside of the Manufacturing PAGA
22 Period. (*Ibid.*)
- 23 ○ The release of the Manufacturing Released PAGA Claims shall be
24 effective as to all Manufacturing Aggrieved Employees, regardless of
25

1 whether a Manufacturing Aggrieved Employee submitted a request for an
2 exclusion from the Class or from any other part of the Settlement. (*Ibid.*)

- 3 • Retail Aggrieved Employees. Upon full funding of the Gross Settlement
4 Amount, the Released Parties shall receive a release from the Retail Aggrieved
5 Employees and the State of California of any claims, demands, rights, liabilities
6 and causes of action arising under PAGA during the Retail PAGA Period from
7 any Retail Aggrieved Employee's employment with any Released Party, (a) for
8 (i) failure to pay for all time worked; (ii) failure to pay regular, minimum or
9 overtime wages; (iii) failure to provide proper meal and/or rest periods and/or
10 associated premiums in lieu thereof; (iv) failure to timely pay wages due during
11 employment or at termination or otherwise; (v) failure to furnish accurate wage
12 statements; (vi) failure to provide seating to retail employees; and (vii) to the
13 extent not covered above, any claims under PAGA pled in or reasonably arising
14 out of the facts alleged in the Fourth Amended Complaint in the *Cristobal*
15 Action and/or in Plaintiff Henry's LWDA pre-filing letter notices sent to the
16 LWDA regarding claims under PAGA, which arose during the Retail PAGA
17 Period; (b) for penalties or liquidated damages or other available remedies
18 available under PAGA arising from the categories of allegations set forth above
19 in Paragraph III.F.3.a, including remedies available under PAGA for alleged
20 violation of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
21 512, 558, 1194, 1194.2, 1197 et seq., and any applicable California Industrial
22 Welfare Commission Wage Orders, including but not limited to Section 14(A) &
23 (B) of such Wage Orders; and (c) for interest, costs, or attorneys' fees available
24 under PAGA arising from the categories of allegations set forth above in
25 Paragraph III.F.3.a, including under California Labor Code sections 218.5, 1194,

1 and 2699(g)(1) and California Code of Civil Procedure section 1021.5 ("Retail
2 Released PAGA Claims"). (§III.F.3)

- 3 ○ For avoidance of doubt, Retail Released PAGA Claims shall exclude
4 class claims (other than as to suitable seating) as to the Retail Aggrieved
5 Employees, individual (non-PAGA) Labor Code claims as to the Retail
6 Aggrieved Employees, and PAGA claims arising outside of the Retail
7 PAGA Period. (*Ibid.*)
- 8 ○ The release of the Retail Released PAGA Claims shall be effective as to
9 all Retail Aggrieved Employees, regardless of whether a Retail Aggrieved
10 Employee submitted a request for an exclusion from the Class or from
11 any other part of the Settlement. (*Ibid.*)
- 12 ● "Released Parties" means Defendants, and each of them, and each of the parents,
13 affiliates (including without limitation Berkshire Hathaway, Inc.) subsidiaries,
14 predecessors, successors, divisions, joint venturers, attorneys, and assigns of
15 either or both Defendants, and each of these entities' past or present owners,
16 directors, officers, employees, partners, members, principals, agents, insurers,
17 coinsurers, re-insurers, investors, shareholders, attorneys, employee benefit
18 plans, employee benefit plan trustees, fiduciaries, and administrators, and
19 personal or legal representatives. (§I.BB)
- 20 ● The named Plaintiffs will also provide a general release and a waiver of the
21 protections of Cal. Civ. Code §1542. (§§ III.F.4, III.F.5)
- 22 ● The releases are effective upon the full funding of the Gross Settlement Amount
23 (§III.F.1), to be within fifteen (15) calendar days after the Effective Date
24 (§III.E.9).

D. SETTLEMENT ADMINISTRATION

- The proposed Settlement Administrator is Rust Consulting, Inc. (§I.FF), which has provided evidence that no counsel are affiliated with it and that it has adequate procedures in place to safeguard the data and funds to be entrusted to it. (See Declaration of Eric Bishop, attached as Exhibit 8 to Supp. Nordrehaug Decl.)
- Settlement administration costs are estimated to be \$55,000 (§III.B.5).
- Notice: The manner of giving notice is described below.
- Opt Out/Objection Dates: The “Notice Response Deadline” is forty-five (45) calendar days after the Settlement Administrator first mails the Class Notice Packets. (§III.E.2.c) In the event any Class Notice Packet is mailed a second time pursuant to the terms of §III.E.2.c, the Class Member in question shall have until fifteen (15) days after the Notice Response Deadline to respond to the Class Notice. (§III.E.2.d)
 - A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that a Manufacturing Aggrieved Employee and/or Retail Aggrieved Employee will still be paid their allocation of the Manufacturing PAGA Payment and/or Retail PAGA Payment, respectively, and will remain bound by the release of the Manufacturing Released PAGA Claims and/or Retail Released PAGA Claims, respectively, regardless of their request for exclusion. (§III.E.3.c)
 - Right of Defendants to Reject Settlement: If the number of Class Members who timely submit valid Elections Not to Participate in Settlement exceeds ten percent (10%) of the Class Members, Defendants, at their sole discretion, shall have the right but not the obligation to revoke the Settlement. (§III.E.4)

- Notice of Final Judgment will be posted on the Settlement Administrator's website. (§III.H)

III. SETTLEMENT STANDARDS AND PROCEDURE

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

"In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260 ("*Wershba*"), [Court needs to "scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."] [internal quotation marks omitted].

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

7 Notwithstanding an initial presumption of fairness, “the court should not give
8 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
9 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
10 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
11 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
12 members, the court must independently and objectively analyze the evidence and
13 circumstances before it in order to determine whether the settlement is in the best
14 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
15 In that determination, the court should consider factors such as “the strength of
16 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
17 the risk of maintaining class action status through trial, the amount offered in
18 settlement, the extent of discovery completed and stage of the proceedings, the
19 experience and views of counsel, the presence of a governmental participant, and the
20 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
21 factors is not exclusive and the court is free to engage in a balancing and weighing of
22 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
23 245.

24 At the same time, “[a] settlement need not obtain 100 percent of the damages
25 sought in order to be fair and reasonable. Compromise is inherent and necessary in the

1 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
2 substantially narrower than it would be if the suits were to be successfully litigated,’
3 this is no bar to a class settlement because ‘the public interest may indeed be served by
4 a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.’” *Id.* at 250.

6 7 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

8 9 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

11 12 **1. The settlement was reached through arm’s-length bargaining**

13 On December 17, 2020, the Parties participated in an all-day mediation presided
14 over by David Rotman, Esq. Following the mediation, the parties agreed to settle the
15 Actions based on a mediator’s proposal which was memorialized in the form of a
16 Memorandum of Understanding. (Declaration of Kyle Nordrehaug (“Nordrehaug
17 Decl.”) ¶11.)

18 19 **2. The investigation and discovery were sufficient**

20 Class Counsel represents that over the course of litigation, the Parties engaged in
21 the investigation of the claims, including production of documents, class data, and other
22 information, allowing for the analysis of liabilities and defenses to the claims in the
23 Actions. There was written discovery performed by the Parties and four depositions
24 were conducted. In addition, Class Counsel also has access to discovery taken in the
25 *Salazar* action in which class certification was litigated and denied. The information

1 for mediation obtained by Plaintiffs included: (1) data showing employees and their
2 employment dates; (2) payroll data for employees; (3) work time data concerning hours
3 worked and time punch data for approximately 40% of the Class; (4) Defendants'
4 employee wage and hour policies; (5) the employment files for the Plaintiffs; and (7)
5 samples of wage statements provided by Defendants. (*Id.* at ¶10.) Plaintiffs analyzed
6 the data with the assistance of damages expert, Berger Consulting, and prepared and
7 submitted a mediation brief and damage valuation to the mediator. (*Id.* at ¶5.) This is
8 sufficient to value the case for settlement purposes.

9 10 **3. Counsel is experienced in similar litigation**

11 Class Counsel represent that are experienced in class action litigation, including
12 wage and hour class actions. (*Id.* at ¶31, Exhibit 2 thereto; Declaration of Vincent C.
13 Granberry ¶3; Declaration of Sahag Majarian II ¶4; Declaration of Larry W. Lee ¶9;
14 Declaration of Max W. Gavron ¶10; Declaration of William L. Marder ¶11.)

15 16 **4. Percentage of the class objecting**

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

21 22 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 23 **FAIR, ADEQUATE, AND REASONABLE**

24 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
25 entirety. The evaluation of any settlement requires factoring unknowns. "As the court

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

1. Amount Offered in Settlement

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

13 Class Counsel estimated Defendant’s maximum exposure at \$54,753,513, based
14 on the following analysis:

Violation	Maximum Exposure
Off-the-Clock / Rounding Damages	\$1,914,724.00
Meal Period Violations	\$2,578,409.00
Rest Period Violations	\$4,008,422.00
Waiting Time Penalties	\$15,297,708.00
Wage Statement Penalties	\$3,741,550.00
PAGA Claim: Manufacturing Employees	\$15,741,400.00
PAGA Claim: Retail Employees	\$11,471,300.00
Total	\$54,753,513.00

(Nordrehaug Decl. ¶¶ 6, 24-25, 33.)

1 Class Counsel obtained a gross settlement valued at \$6,000,000. This is 11% of
2 Defendant's maximum exposure.

3 4 **2. The Risks of Future Litigation**

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

17 The Court also notes that Plaintiffs bring a PAGA claim on behalf of the LWDA,
18 which was sent a copy of the First Amended Settlement Agreement on October 18, 2021
19 and has not yet objected. (Supp. Nordrehaug Decl., Exhibit 9.) Any objection by it will
20 be considered at the final fairness hearing.

21 22 **3. The Releases Are Limited**

23 The Court has reviewed the Releases to be given by the absent class members and
24 the named plaintiffs. The releases, described above, are tailored to the pleadings and
25 release only those claims in the pleadings. There is no general release by the absent

1 class. The named plaintiffs' general releases are appropriate given that each was
2 represented by counsel in its negotiation.

3 4 **4. Conclusion**

5 Class Counsel estimated Defendant's maximum exposure at \$54,753,513. Class
6 Counsel obtained a gross settlement valued at \$6,000,000. This is approximately 11% of
7 Defendant's maximum exposure, which, given the uncertain outcomes, including the
8 potential that the class might not be certified, that liability is a contested issue, and that
9 the full amount of penalties would not necessarily be assessed even if the class is certified
10 and liability found, the settlement is within the "ballpark of reasonableness."

11 12 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

13 A detailed analysis of the elements required for class certification is not required,
14 but it is advisable to review each element when a class is being conditionally certified.
15 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
16 advocating class treatment must demonstrate the existence of an ascertainable and
17 sufficiently numerous class, a well-defined community of interest, and substantial
18 benefits from certification that render proceeding as a class superior to the alternatives."
19 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

21 There are 5,145 putative Class Members. (Nordrehaug Decl. ¶30.a.)
22 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
23 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the "requirement that there be many
24 parties to a class action is liberally construed," and citing examples wherein classes of
25

1 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
2 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

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

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

9 The class is defined above. Class Members are ascertainable through
10 Defendants’ records. (Nordrehaug Decl. ¶30.b.)

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

12 “The community of interest requirement involves three factors: ‘(1) predominant
13 common questions of law or fact; (2) class representatives with claims or defenses typical
14 of the class; and (3) class representatives who can adequately represent the class.’”
15 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

16 As to predominant questions of law or fact, Plaintiffs contend that common
17 questions of law and fact are present, and specifically the common questions of whether
18 the Defendants failed to provide meal and rest periods, whether class members were
19 lawfully compensated for all hours worked, and whether Class Members are entitled to
20 damages and penalties as a result of these practices. (Nordrehaug Decl. ¶30.b.)

21 As to typicality, Plaintiffs assert that they, like other members of the Class, worked
22 for Defendants as non-exempt manufacturing employees during the Class Period.
23 Plaintiffs contend that, like members the Class, they were subject to the same practices
24 and policies of Defendants and are subject to the same defenses. Thus, Plaintiffs assert
25 that the claims of the Plaintiffs and the Class Members arise from the same course of

1 conduct by the Defendants, involve the same employment policies and practices of
2 Defendants, and are based on the same legal theories. (*Id.* at ¶30.c.)

3 As to adequacy, each Plaintiff seeking to represent the class represents that he or
4 she does not have conflicts of interest with the class, and is aware of his or her duties to
5 the class as well as the risks of serving as class representatives. (Declaration of
6 Lauralynne Cristobal ¶¶ 7-16; Declaration of Allen Garcia ¶¶ 5-6; Declaration of Robert
7 Taylor ¶¶ 7-9. As previously stated, Class Counsel have experience in class action
8 litigation.

9 10 **4. Substantial Benefits Exist**

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

13 14 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 15 **OF DUE PROCESS**

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

24 //

25 //

1 **1. Method of class notice**

2 No later than fourteen (14) calendar days after the Court enters the Order
3 Granting Preliminary Approval of the Settlement, Defendants will provide to the
4 Settlement Administrator an electronic database containing each Class Member's Class
5 Data. If any or all of the Class Data is unavailable to Defendants, Defendants will so
6 inform Class Counsel and the Parties will make their best efforts to reconstruct or
7 otherwise agree upon the unavailable portion of the Class Data prior to when it must be
8 submitted to the Settlement Administrator. It is proposed that Class Data will otherwise
9 remain confidential and will not be disclosed to anyone, except as provided by this
10 Agreement or pursuant to Defendants' express written authorization. All Class Data
11 will be used for settlement notification and settlement administration and shall not be
12 used for any other purpose by the Settlement Administrator. No portion of the Class
13 Data will be provided to Plaintiffs or Class Counsel. (§III.E.2.a). Counsel shall discuss
14 at oral argument whether this will prohibit Class Counsel from discharging their
15 fiduciary duties to the class.

16 The Settlement Administrator shall update the Class Data using the National
17 Change of Address database prior to mailing the Class Notice Packets. Using best
18 efforts to mail the Class Notice Packets as soon as possible, and in no event later than
19 fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator
20 will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail
21 using the mailing address information provided by Defendants ("Last Known
22 Address"), unless modified by any updated address information that the Settlement
23 Administrator obtains in the course of administration of the Settlement. The Class
24 Notice Packets shall also include Spanish and Chinese translations of the Class Notice.
25 (§III.E.2.b)

1 In the event that, subsequent to the first mailing of a Class Notice, and prior to
2 the date that is forty-five (45) calendar days after the Settlement Administrator first
3 mails the Class Notice Packets pursuant to Paragraph III.E.2.b ("Notice Response
4 Deadline"), a Notice is returned to the Settlement Administrator by the United States
5 Postal Service with a forwarding address for the recipient, the Settlement Administrator
6 shall re-mail that Notice to the forwarding address, and the forwarding address for that
7 Class Member shall replace the Last Known Address for any further mailing. In the
8 event that subsequent to the first mailing of a Class Notice, and prior to the Notice
9 Response Deadline, a Notice is returned to the Settlement Administrator by the United
10 States Postal Service because the address of the recipient is no longer Settlement
11 Administrator shall undertake to ascertain the current address of the particular Class
12 Member in question by utilizing the utilization of the National Change of Address
13 Database maintained by the United States Postal Service. If the Settlement
14 Administrator finds a new mailing address for the Class Member in question, the
15 Settlement Administrator will re-send that Class Notice within five (5) calendar days of
16 receiving such information. If the Settlement Administrator does not find a new mailing
17 address, the Class Notice shall be sent again to the Last Known Address, and in either
18 event, the Class Notice shall be deemed received once it is mailed for the second time.
19 In the event that subsequent to the second mailing of a Class Notice, the Class Notice is
20 returned to the Settlement Administrator by the United States Postal Service because
21 the address of the recipient is no longer valid, e.g., the envelope is marked "Return to
22 Sender," the Settlement Administrator shall be required to take no further action with
23 that Class Notice. Nothing in this section shall be deemed to require any Class Notice
24 Packet to be mailed a third time. (§III.E.2.c)

1 In the event any Class Notice Packet is mailed a second time pursuant to the
2 terms of Paragraph III.E.2.c, the Class Member in question shall have until fifteen (15)
3 days after the Notice Response Deadline to respond to the Class Notice pursuant to the
4 terms of Paragraph III.E.3. (§III.E.2.d)

5 **2. Content of class notice.**

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

15 **3. Settlement Administration Costs**

16 Settlement administration costs are estimated at **\$55,000**, including the cost of
17 notice (§III.B.5). Prior to the time of the final fairness hearing, the settlement
18 administrator must submit a declaration attesting to the total costs incurred and
19 anticipated to be incurred to finalize the settlement for approval by the Court.
20

21 **E. ATTORNEY FEES AND COSTS**

22 California Rule of Court, rule 3.769(b) states: "Any agreement, express or
23 implied, that has been entered into with respect to the payment of attorney fees or the
24 submission of an application for the approval of attorney fees must be set forth in full in
25

1 any application for approval of the dismissal or settlement of an action that has been
2 certified as a class action.”

3 Ultimately, the award of attorney fees is made by the court at the fairness
4 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
5 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
6 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
7 1132-1136. In common fund cases, the court may use the percentage method. If
8 sufficient information is provided a cross-check against the lodestar may be conducted.
9 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
10 agreement by the parties to the contrary, “the court ha[s] an independent right and
11 responsibility to review the attorney fee provision of the settlement agreement and
12 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
13 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

14 The question of class counsel’s entitlement to **\$2,000,000** (33 1/3%) in attorney
15 fees will be addressed at the final fairness hearing when class counsel brings a noticed
16 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
17 the court with current market tested hourly rate information and billing information so
18 that it can properly apply the lodestar method and must indicate what multiplier (if
19 applicable) is being sought.

20 Fee Split: Plaintiffs’ counsel will be splitting the approved fees as follows: 85%
21 to Blumenthal Nordrehaug Bhowmik De Blouw LLP, 4.125% to Lavi & Ebrahimian,
22 LLC, 3.375% to Law Offices of Sahag Majarian, II, 4.875% to Diversity Law Group,
23 APC, and 2.625% to Polaris Law Group LLP, which Plaintiffs authorized in writing.
24 (Granberry Decl. ¶8.)
25

1 Class counsel should also be prepared to justify the costs sought (capped at
2 **\$50,000**) by detailing how they were incurred.

3
4 **F. SERVICE AWARDS**

5 The Settlement Agreement provides for a service award of up to **\$10,000 each**
6 for the class representatives. There are only three such persons. Henry is not a class
7 representative.

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

16 PAGA has no provision for incentive payments for the named plaintiffs. Its
17 requirement that 25 percent of recovered penalties “shall be” distributed to “the
18 aggrieved employees” offers no suggestion that any employee should receive more than
19 his or her pro rata share. Labor Code §2699(i). PAGA civil penalties “must be
20 distributed to all aggrieved employees,” rather than solely to the aggrieved employee
21 who brings the PAGA action. *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th
22 736, 741-742. The *Moorer* court noted that allocating 25 percent to all aggrieved
23 employees “is consistent with the statutory scheme under which the judgment binds all
24 aggrieved parties, including nonparties” and that a PAGA action “is fundamentally a
25 law enforcement action designed to protect the public and not benefit private

1 parties.” *Id.* at pp. 742-743, quoting *Iskanian, supra*, 59 Cal.4th at p. 381. If counsel
2 have authority to the contrary it should be provided.

3 The Court will consider the adequacy of the information provide in connection
4 with the final fairness hearing.

5
6 **V. CONCLUSION AND ORDER**

7 Contingent upon the parties addressing the above-listed issues by November 12,
8 2021, 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 Lauralynne Cristobal, Robert Taylor, and Allen Garcia as Class
13 Representatives;
- 14 (4) Appoints Blumenthal Nordrehaug Bhowmik De Blouw LLP, Lavi &
15 Ebrahimian, LLP, Law Offices of Sahag Majarian, II, Diversity Law Group,
16 P.C., and Polaris Law Group LLP as Class Counsel;
- 17 (5) Appoints Rust Consulting as Settlement Administrator;
- 18 (6) Approves the proposed notice plan; and
- 19 (7) Approves the proposed schedule of settlement proceedings as follows:
- 20 • Preliminary approval hearing: November 9, 2021
 - 21 • Deadline for Defendant to provide class list to settlement administrator:
22 November 23, 2021 (within 14 calendar days of preliminary approval)
 - 23 • Deadline for settlement administrator to mail notices: December 7, 2021 (within
24 28 calendar days from preliminary approval)
- 25

- Deadline for class members to opt out: January 21, 2022 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class members to object: January 21, 2022 (45 calendar days from the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval: February 23, 2022 (16 court days prior to final fairness hearing)
- Final fairness hearing: March 17, 2022, at 9:00 a.m.

Any failure to fully and timely comply with the contingencies may result in the revocation of this Order in its entirety.

Dated: 11/9/2021



MAREN E. NELSON

Judge of the Superior Court