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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **CIVIL DIVISION, CENTRAL DISTRICT**
11 **SPRING STREET COURTHOUSE**

11 JAMES AVILEZ, individually and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 v.

15 GORLITZ SEWER & DRAIN, INC., a
16 California corporation, and DOES 1 through 20,
17 inclusive,

18 Defendants.

Case No. 20STCV21169

**[FIRST AMENDED PROPOSED] ORDER
GRANTING PLAINTIFF JAMES
AVILEZ'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT**

Hearing Date: May 21, 2021

Hearing Time: 10:00 a.m.

Dept.: 9

Judge: Honorable Yvette M. Palazuelos

Original Complaint Filed: May 27, 2020

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20 **ORDER**

21 On May 27, 2020, the Plaintiff, James Avilez, filed a Class Action Complaint ("the
22 Complaint") against the Defendant, Gorlitz Sewer & Drain, Inc., on behalf of himself and a proposed
23 class consisting of all persons who were employed by Defendant and paid hourly rates at any time within the
24 time period of 4 years preceding the filing of the Complaint up to and through the date of filing of the Complaint
25 ("the Class Period"). Plaintiff alleges the following causes of action against Defendant for:

26 (a) failure to pay wages (including overtime wages where appropriate) for hours worked off-the-
27 clock in violation of Labor Code §§204(a), 218.6, 510(a), 1194(a) and 1197 (First Cause of Action);

28 (b) failure to provide accurate itemized wage statements in violation of Labor Code §226(a)

1 (Second Cause of Action);

2 (c) failure to provide meal breaks in violation of Labor Code §512(a) and IWC Wage Order No.
3 1-2001, §11(A) – (C) and to pay meal period premiums in violation of Labor Code §226.7(c) and IWC Wage
4 Order No. 1-2001, §11(D) (Third Cause of Action);

5 (d) failure to authorize and permit rest breaks in violation of IWC Wage Order No. 1-2001,
6 §12(A) and to pay rest period premiums in violation of Labor Code §226.7(c) and IWC Wage Order No. 1-
7 2001, §12(B) (Fourth Cause of Action);

8 (e) failure to timely pay all wages due upon termination of employment in violation of Labor
9 Code §§201-203 (Fifth Cause of Action);

10 (f) unfair business practices in violation of California Business & Professions Code §17200 et
11 seq. (Sixth Cause of Action); and

12 (g) civil penalties under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §2698
13 et seq. (Seventh Cause of Action).

14 Defendant has filed a general denial denying all material allegations in the Complaint. Defendant
15 further denies any liability or wrongdoing.

16 Via mediation with the Honorable Judge Margaret A. Nagle, Ret., a former Magistrate Judge in the
17 Central District of California who has substantial experience mediating wage-and-hour class actions, the
18 Parties have reached a proposed class action settlement (“the Settlement”) reflected in the First Amended
19 Stipulation of Class Action Settlement and Release (“the First Amended Stipulation”) previously filed and
20 incorporated herein by reference. As used in this Order, all capitalized terms have the meanings defined in the
21 First Amended Stipulation.

22 Pursuant to California Rule of Court 3.769, Plaintiff has filed an unopposed motion for an Order
23 granting preliminary approval of the Settlement set forth in the First Amended Stipulation (“Motion for
24 Preliminary Approval of Proposed Class Action Settlement”). The Court held a hearing on Plaintiff’s Motion
25 for Preliminary Approval of Proposed Class Action Settlement on May 21, 2021, for the purpose of
26 determining, among other things, whether the Settlement reflected in the First Amended Stipulation
27 was within the range of possible approval and whether the Notice of Class Action Settlement (“Class
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1 Notice”) attached to the First Amended Stipulation as Exhibit A (English version) and Exhibit B
2 (Spanish version), and the scheduling of a formal fairness hearing, also known as a final approval
3 hearing, will be worthwhile. Appearing at the hearing were Julie Weber or Rosely George of
4 Kaufman Dolowich & Voluck, LLP on behalf of Defendant and Daniel V. Santiago of the Law
5 Offices of Daniel V. Santiago, P.C. on behalf of Plaintiff and the Class Members.

6 The Court, having reviewed the papers filed in support of Plaintiff’s Motion for Preliminary
7 Approval of Proposed Class Action Settlement (including (a) the Notice of Motion and Plaintiff’s Unopposed
8 Motion for Preliminary Approval of Proposed Class Action Settlement, (b) the Memorandum of Points and
9 Authorities in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Proposed Class Action
10 Settlement, (c) the Declaration of Daniel V. Santiago in Support of Plaintiff’s Unopposed Motion for
11 Preliminary Approval of Proposed Class Action Settlement, (d) the Supplemental Memorandum in Support
12 of Plaintiff’s Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement (Addressing
13 All Items in the Addendum to the Court’s Tentative Ruling Dated February 10, 2021), (e) the Supplemental
14 Declaration of Daniel V. Santiago in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of
15 Proposed Class Action Settlement, (f) the Declaration of James Avilez in Support of Plaintiff’s Unopposed
16 Motion for Preliminary Approval of Proposed Class Action Settlement, (g) the First Amended Stipulation, and
17 (h) the [First Amended Proposed] Order Granting Plaintiff’s Unopposed Motion for Preliminary Approval of
18 Proposed Class Action Settlement), heard the statements of counsel, and further considered the matter,

19 **IT IS HEREBY ORDERED:**

20 1. It appears to the Court on a preliminary basis that: (1) based on the papers and
21 information submitted to the Court in support of Plaintiff’s Unopposed Motion for Preliminary Approval
22 of Proposed Class Action Settlement, the settlement amount is fair and reasonable to the Class Members
23 when balanced against the probable outcome of further litigation relating to class certification, the
24 potential value of Plaintiff’s asserted claims, Defendant’s potential liability and damages issues, and
25 potential appeals; (2) significant investigation and research has been conducted such that counsel for
26 the parties at this time are able to reasonably evaluate their respective positions; (3) settlement at this
27 time will avoid substantial costs, delay and risks that would be presented by the further prosecution
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1 of the litigation; and (4) the Settlement has been reached as the result of intensive, serious and non-
2 collusive negotiations between the Parties. Accordingly, the Court preliminarily finds that the First
3 Amended Stipulation was entered into in good faith.

4 2. The Court hereby GRANTS preliminary approval of the terms and conditions of the
5 Settlement reflected in the First Amended Stipulation. The Court preliminarily finds that the terms
6 and conditions of the Settlement appear to be within the range of possible approval, pursuant to the
7 provisions of Section 382 of the California Code of Civil Procedure.

8 3. The Court hereby GRANTS conditional certification of the provisional class, in
9 accordance with the First Amended Stipulation for the purposes of this settlement only. The Class is
10 defined as all persons who were employed by Defendant and paid hourly rates at any time within the Class
11 Period (i.e., the time period of 4 years preceding the filing of the Complaint up to and through the date of filing
12 of the Complaint).

13 4. The Court hereby authorizes the retention of CAC Services Group, LLC as Settlement
14 Administrator for the purpose of this settlement.

15 5. The named Plaintiff, James Avilez, is a suitable Class Representative and is appointed
16 Class Representative for the Class conditionally certified by this Order.

17 6. The Court appoints Daniel V. Santiago of the Law Offices of Daniel V. Santiago, P.C.
18 as Class Counsel for settlement purposes only. The Court finds that counsel has demonstrable
19 experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the
20 Class conditionally certified by this Order.

21 7. The Court hereby APPROVES the Notice of Class Action Settlement (the “Class
22 Notice”) attached to the First Amended Stipulation as Exhibit A (English version) and Exhibit B
23 (Spanish version). The Court finds that the Class Notice along with the related notification materials
24 constitutes the best notice practicable under the circumstances and are in full compliance with the
25 laws of the State of California, to the extent applicable, the United States Constitution, and the
26 requirements of due process. The Court further finds that the Class Notice appears to fully and
27 accurately inform the Class Members of all material elements of the First Amended Stipulation, the
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1 proposed fees and costs of administration, each Class Member's right to be excluded from the Class,
2 each Class Member's right and opportunity to object to the Settlement, details about the court hearing
3 on settlement approval, and how the Class Members may obtain additional information.

4 8. The Court hereby APPROVES the proposed procedure for exclusion from the Class
5 set forth in the First Amended Stipulation. Any Class Member who submits a valid and timely request
6 for exclusion shall be barred from receiving an Individual Settlement Payment.

7 9. The Court further ORDERS that Class Counsel shall file by _____ a motion
8 for approval of the Class Representative Enhancement Award, the Settlement Administrator's
9 Administration Costs, and Class Counsel's Award of Attorney's Fees and Costs, with the appropriate
10 declaration(s) and supporting evidence.

11 10. The Court further ORDERS that Class Counsel shall file by _____ a motion
12 for final approval of the settlement, with the appropriate declaration(s) and supporting evidence.

13 11. The Court further ORDERS that each Class Member who does not request exclusion
14 from the settlement shall be given a full opportunity to object to the proposed settlement reflected in
15 the First Amended Stipulation and to participate at a Final Approval Hearing, which the Court sets to
16 commence on _____ at _____ a.m. in Department 9 of the Los Angeles Superior Court,
17 located at 312 N. Spring St., Los Angeles, California 90012. Any Class Member seeking to object to
18 the Settlement shall submit such objection to the Settlement Administrator via U.S. mail or e-mail no
19 later than sixty (60) days following the date on which the Settlement Administrator first mails the
20 Class Notice to Class Members. Any Class Member who fails to submit to the Settlement
21 Administrator a timely written objection shall be foreclosed from objecting to the First Amended
22 Stipulation, unless otherwise ordered by the Court.

23 12. The Court further ORDERS that pending further order of this Court, all proceedings
24 in this lawsuit except those contemplated herein and in the First Amended Stipulation are stayed.

25 13. The Court further ORDERS that to facilitate administration of the Settlement, all Class
26 Members, including Plaintiff, are hereby enjoined from filing or prosecuting any claims, cases, suits
27 or administrative proceedings (including filing or pursuing claims with the California Division of
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1 Labor Standards Enforcement) regarding claims released by the Settlement unless and until such
2 Class Members have filed valid and timely written requests for exclusion with the Settlement
3 Administrator.

4 14. If the Court grants final approval of the Settlement, Settlement Class Members and
5 their successors shall conclusively be deemed to have given a release, as set forth in the First
6 Amended Stipulation and Class Notice, against the Released Parties, and all Settlement Class
7 Members and their successors shall be permanently enjoined and forever barred from asserting any
8 claim related to this lawsuit against the Released Parties. If for any reason the Court does not execute
9 and file a Final Approval Order, the Settlement subject to this Order and all evidence and proceedings
10 had in connection with the Settlement shall be null and void.

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12 **IT IS SO ORDERED.**

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14 Dated: _____

Judge of the Los Angeles Superior Court