

FILED
LOS ANGELES SUPERIOR COURT

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SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY N. Navarro Deputy
NANCY NAVARRO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JOSE LUIS TOPETE PEREZ, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

v.

PRODUCTION RESOURCE GROUP LLC,
a Delaware limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV38584
Related to: 20STCV27311

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

I. BACKGROUND

Plaintiff Jose Luis Topete Perez sues his employer, Defendant Production Resource Group, LLC (“Defendant” or “PRG”), for alleged wage and hour violations. PRG is an audio-visual equipment rental service. Plaintiff seeks to represent a class of Defendant’s current and former employees.

1 On October 7, 2020, Plaintiff filed a putative class and PAGA representative
2 action complaint against PRG alleging the following causes of action: (i) failure to
3 provide accurate, itemized wage statements (Labor Code § 226, *et seq.*); and (ii) civil
4 penalties under the Private Attorneys General Act (Labor Code § 2698, *et seq.*)
5 (“PAGA”).

6 In December 2020, the parties decided to exchange informal discovery and
7 information in order to engage in direct settlement negotiations without the use of a
8 mediator. The parties ultimately agreed in principle on a class-wide and PAGA
9 resolution. On September 9, 2021, the parties finalized and executed the *Stipulation*
10 *Regarding Class and Private Attorneys General Act Settlement and Release*
11 (“Settlement Agreement”), a copy of which was filed with the Court.

12 On October 1, 2021, the Court issued a “checklist” to the parties pertaining to
13 deficiencies in the Settlement Agreement and Notice. In response, the parties filed
14 further briefing and revised documents, including the Amended Settlement Agreement
15 attached to the Supplemental Declaration of Scott M. Lidman (“Lidman Decl.”) as
16 Exhibit 5. The matter came on for hearing on March 14, 2022, at which time the
17 Court indicated an issue with the scope of the parties proposed to be released. Counsel
18 thereafter revised the release language and submitted on March 22, 2022 a revised
19 Settlement Agreement, attached to the Declaration of Scott M. Lidman and filed March
20 22, 2022.

21 For the reasons set forth below, the Court now preliminarily grants approval for
22 the settlement as set forth in the Second Amended Stipulation regarding Class and
23 PAGA Settlement.

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1 **II. THE TERMS OF THE SETTLEMENT**

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

3 “Class” or “Class Members” means all current and former employees of
4 Defendant who were employed by Defendant in the State of California at any time
5 during the Class Period and who received a wage statement that identified the employer
6 as “PRG” and/or anything other than “Production Resource Group, L.L.C.” The Class
7 includes both exempt and non-exempt employees. (§1.2)

8 “Class Period” means the period from April 6, 2019 through and including
9 August 20, 2020. (§1.8) Class Counsel represents that Defendant cured any alleged
10 deficiency as to its wage statement practices on August 18, 2020. (Lidman Decl. ¶11.)

11 “PAGA Affected Employees” means all current and former non-exempt
12 employees of Defendant who were employed by Defendant in the State of California at
13 any time during the PAGA Period. (§1.22)

14 “PAGA Period” means the period from July 16, 2019 through and including
15 April 1, 2021. (§1.27) Class Counsel represents that the parties agreed to close the
16 PAGA Period on the date they reached terms on the settlement. (Lidman Decl. ¶14, fn
17 6.)

18 19 **B. THE MONETARY TERMS OF SETTLEMENT**

20 The essential monetary terms are as follows:

21 The Gross Settlement Amount (“GSA”) is **\$200,000** (§1.17). This includes
22 payment of a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000) and 25%
23 to the PAGA Affected Employees (\$5,000) (§§ 1.25, 1.26).

24 Unexpected Pay Periods/Escalator Clause. Defendant represents that there were an
25 estimated 17,587 pay periods worked by Class Members during the Class Period. In the

1 event the parties learn prior to the mailing of the Notice of Settlement that the number of
2 pay periods worked by Class Members during the Class Period is more than 10% greater
3 than 17,587 pay periods, then Defendant agrees to increase the Net Settlement Amount
4 on a proportional basis (i.e., if there is a 15% increase in the number of pay periods
5 worked by Class Members during the Class Period, then Defendant will increase the Net
6 Settlement Amount by 15%, from the estimated \$88,333.34 to \$101,583.34). Similarly,
7 Defendant represented that there were an estimated 8,077 pay periods worked by PAGA
8 Affected Employees during the PAGA Period. In the event the parties learn prior to the
9 mailing of the Notice of Settlement that the number of pay periods worked by PAGA
10 Affected Employees during the PAGA Period is more than 10% greater than 8,077, then
11 Defendant agrees to increase the PAGA Distribution Amount on a proportional basis
12 (i.e., if there is a 15% increase in the number of pay periods worked by PAGA Affected
13 Employees during the PAGA Period, then Defendant will increase the PAGA
14 Distribution Amount by 15%, from the estimated \$20,000 to \$23,000). (§3.5.1.1)

15 The Net Settlement Amount (“Net”) (\$88,333.34) is the GSA less:

- 16 ○ Up to **\$66,666.66** (33 1/3%) for attorney fees (§1.6);
- 17 ○ Up to **\$10,000** for attorney costs (§1.5);
- 18 ○ Up to **\$5,000** for a service award to the proposed class representative
19 (§1.35); and
- 20 ○ Estimated **\$10,000** for settlement administration costs (§1.37).
- 21 • Assuming the Court approves all maximum requested deductions, approximately
22 \$88,333.34 will be available for automatic distribution to participating class
23 members. Assuming full participation, the average settlement share will be
24 approximately \$109.32. ($\$88,333.34 \text{ Net} \div 808 \text{ class members} = \109.32). In
25 addition, each PAGA Affected Employee will receive a portion of the PAGA

penalty, estimated to be \$10.87 per PAGA Affected Employee. (\$5,000 or 25% of \$20,000 PAGA penalty ÷ 460 PAGA Affected Employees = \$10.87).

- There is no Claim Requirement (Notice pg. 5).
- The settlement is not reversionary (§1.17).
- Individual Settlement Share Calculation: Each Class Member Payment shall be calculated by dividing a Participating Class Member's individual pay periods worked for Defendant in California during the Class Period by the total of all Participating Class Members pay periods worked for Defendant in California during the Class Period (all according to Defendant's business records), and multiplying this result by the Net Settlement Amount. (§3.5.1.7)
 - "PAGA Affected Employee Payment means the twenty-five percent (25%) of the PAGA Distribution Amount that shall be paid to PAGA Affected Employees. The PAGA Affected Employee Payment shall be in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00). The PAGA Affected Employee Payment shall be distributed to PAGA Affected Employees on a pro rata basis based on the number of pay periods each worked for Defendant in California during the PAGA Period. (§1.23)
- Tax Withholdings: The Class Member Payments will be allocated 100% as penalties and interest and will be subject to IRS Form 1099 reporting. (§3.5.1.7)
- Uncashed Settlement Payment Checks: Any checks issued to Participating Class Members or PAGA Affected Employees shall remain valid and negotiable for one hundred and fifty (150) calendar days from the date of their issuance and then shall become void on the 151st day after mailing, i.e., the Void Date. The Parties agree that any unclaimed funds in the Settlement Fund Account as a

1 result of the failure to cash Class Member Payment checks and PAGA Affected
2 Employee Payment checks by the Void Date shall be transmitted by the
3 Settlement Administrator to the State of California Controller's Office,
4 Unclaimed Property Fund, in accordance with California law regarding such
5 escheatment, within twenty-one (21) calendar days of the Void Date. (§3.7.9)

- 6 • Funding and Distribution of Settlement: Within fifteen (15) calendar days
7 following the Effective Date, Defendant shall fund the Settlement by providing
8 the Gross Settlement Amount to the Settlement Administrator. (§3.7.2) Within
9 thirty (30) calendar days following the Effective Date, the Settlement
10 Administrator shall distribute from the Settlement Fund Account the Class
11 Member Payments to Participating Class Members, and to PAGA Affected
12 Employees their collective twenty-five percent (25%) share of the PAGA
13 Distribution Amount. (§§ 3.7.7, 3.7.8)

14 15 **C. TERMS OF RELEASES**

- 16 • Released Class Claims. Upon Defendant's funding of the Gross Settlement
17 Amount, Plaintiff - on behalf of himself and Participating Class Members – will
18 fully and irrevocably release the Released Parties from the Class Claims, as
19 defined in Paragraph 1.3, in exchange for the consideration provided by this
20 Settlement ("Released Class Claims"). All Released Class Claims are released
21 for the Class Period. Plaintiff and Participating Class Members may discover
22 facts in addition to or different from those they now know or believe to be true
23 with respect to the subject matter of the Released Class Claims but, upon
24 Defendant's funding of the Gross Settlement Amount, shall be deemed to have,
25 and by operation of the Final Approval Order and Judgment shall have, fully,

1 finally, and forever settled and released any and all of the Released Class
2 Claims. It is the intent of the Parties that the Final Approval Order and Judgment
3 entered by the Court pursuant to this Agreement shall have full *res judicata*
4 effect and be final and binding upon Participating Class Members regarding the
5 Released Class Claims. (§3.5.2)

- 6 ○ Class members will release: Any and all claims, rights, demands,
7 liabilities, and causes of action of every nature and description, whether
8 known or unknown, for wages, benefits, and related penalties that arose
9 during the Class Period and were actually asserted or that could have been
10 asserted in the Complaint filed by the Plaintiff in the Action on October 7,
11 2020 (hereinafter, the “operative Complaint”) on behalf of himself and/or
12 the Class Members based on the facts alleged in and/or in support of
13 Plaintiff’s first cause of action alleging a class claim for alleged violation
14 of California Labor Code section 226, including but not limited to claims
15 for: (a) statutory penalties, civil penalties, and damages for failure to
16 timely provide accurate, itemized wage statements in violation of
17 California Labor Code section 226; (b) declaratory relief to determine
18 whether the wage statement practices alleged in the operative Complaint
19 are unlawful; (c) injunctive relief to halt any wage statement practices
20 alleged in the operative Complaint to be unlawful; (d) restitution and an
21 order requiring Defendant to restore and disgorge funds to each Class
22 Member acquired by means of any act or practice relating to wage
23 statements alleged in the operative Complaint to be unlawful; (e)
24 attorneys’ fees and costs incurred to prosecute the Action on behalf of
25 Class Members, including but not limited to fees incurred for the services

1 of Class Counsel or any other counsel; and (f) any other derivative
2 remedies, penalties, and interest available under the law based on the facts
3 alleged in the Action with respect to Plaintiff's wage statement
4 allegations, including but not limited to California Labor Code section
5 226 and the applicable Industrial Welfare Commission ("IWC") Wage
6 Order. "Class Claims" also includes all claims that Plaintiff and/or Class
7 Members may have against the Released Parties relating to: (a) the
8 payment, taxation, and allocation of attorneys' fees and costs to Class
9 Counsel pursuant to this Settlement Agreement; (b) the payment, taxation,
10 and allocation of Plaintiff's Service Award pursuant to this Settlement
11 Agreement; and (c) the payment, taxation, and allocation of payments to
12 Class Members. (§1.3)

- 13 • Released PAGA Claims. Upon Defendant's funding of the Gross Settlement
14 Amount, Plaintiff - on behalf of himself, the State of California, and PAGA
15 Affected Employees - will fully and irrevocably release the Released Parties
16 from the PAGA Claims, as defined in Paragraph 1.24, in exchange for the
17 consideration provided by this Settlement ("Released PAGA Claims"). All
18 Released PAGA Claims are released for the PAGA Period. Plaintiff, the State of
19 California, and PAGA Affected Employees may discover facts in addition to or
20 different from those they now know or believe to be true with respect to the
21 subject matter of the Released PAGA Claims, but upon Defendant's funding of
22 the Gross Settlement Amount, shall be deemed to have, and by operation of the
23 Final Approval Order and Judgment shall have, fully, finally, and forever settled
24 and released any and all of the Released PAGA Claims. It is the intent of the
25 Parties that the Final Approval Order and Judgment entered by the Court shall

1 have full *res judicata* effect and be final and binding upon the State of California
2 and PAGA Affected Employees regarding the Released PAGA Claims.

- 3 ○ “PAGA Claims” means any and all claims, rights, demands, liabilities,
4 and causes of action of every nature and description, whether known or
5 unknown, for civil penalties that arose during the PAGA Period and were
6 actually asserted or that could have been asserted in the operative
7 Complaint and Plaintiff’s July 16, 2020 letter to the California Labor and
8 Workforce Development Agency (“LWDA”) by the Plaintiff on behalf of
9 himself, the State of California, and/or PAGA Affected Employees based
10 on the facts alleged in and/or in support of Plaintiff’s second cause of
11 action alleging a PAGA claim for alleged violation of California Labor
12 Code sections 226.7 and 516 and the applicable IWC wage order,
13 including but not limited to claims for: (a) civil penalties pursuant to
14 PAGA for failure to provide rest periods or compensation in lieu thereof
15 in violation of California Labor Code sections 226.7 and 516 and the
16 applicable IWC Wage Order; (b) declaratory relief to determine whether
17 the rest period practices alleged in the operative Complaint and Plaintiff’s
18 July 16, 2020 letter to the LWDA are unlawful; (c) injunctive relief to halt
19 any rest period practices alleged in the operative Complaint and Plaintiff’s
20 July 16, 2020 letter to the LWDA to be unlawful; (d) attorneys’ fees and
21 costs incurred to prosecute the Action on behalf of the State of California
22 and PAGA Affected Employees, including but not limited to fees incurred
23 for the services of Class Counsel or any other counsel; and (e) any other
24 derivative remedies, penalties, and interest available under the law based
25 on the facts alleged in the operative Complaint and Plaintiff’s July 16,

2020 letter to the LWDA with respect to Plaintiff's rest period allegations, including but not limited to California Labor Code sections 204, 210, 226.7, 516, 558, and 1174 and the applicable IWC Wage Order. "PAGA Claims" also includes all claims that Plaintiff, the State of California, and/or PAGA Affected Employees may have against the Released Parties relating to: (a) the payment, taxation, and allocation of attorneys' fees and costs to Class Counsel pursuant to this Settlement Agreement; (b) the payment, taxation, and allocation of Plaintiff's Service Award pursuant to this Settlement Agreement; and (c) the payment, taxation, and allocation of payments to PAGA Affected Employees.

(¶1.24)

- "Released Parties" means Defendant Production Resource Group, L.L.C. and its subsidiaries, affiliates, and/or parent companies, employee benefit plans sponsored or maintained by any of the foregoing, their attorneys, and their respective successors and predecessors in interest; all of their respective officers, directors, managers, employees, administrators, fiduciaries, trustees, beneficiaries, and agents; and each of their past, present, and future officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and reinsurers. Notwithstanding the foregoing, the Released Parties do not include any individual who is a Class Member (¶1.32)
- The named Plaintiff will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (¶3.5.4)

- The releases are effective upon Defendant s funding of the Gross Settlement Amount, which will occur within fifteen (15) calendar days following the Effective Date. (¶3.7.2)

D. SETTLEMENT ADMINISTRATION

- The proposed Settlement Administrator is Simpluris, Inc., 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 Springer.)
- Settlement administration costs are estimated to be \$10,000 (¶3.5.1.5).
- Notice: The manner of giving notice is described below.
- Opt Out/Objection Dates: “Response Deadline” means the date sixty (60) calendar days after the Settlement Administrator mails the Notice of Settlement to Class Members and by which Class Members may postmark Requests for Exclusion or Notices of Objection to the Settlement. (¶1.34) The Response Deadline also applies to the submission of workweek disputes. (¶3.6.6)
 - The Parties agree there is no statutory or other right for any PAGA Affected Employee to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. Under no circumstances will a Class Member who has submitted a timely and valid Request for Exclusion be considered to have opted out of the PAGA Distribution Amount portion of the Settlement or the Released PAGA Claims. (¶3.6.9.1)
- Notice of Final Judgment will be posted on the Settlement Administrator’s website (Notice pg. 8).

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1 **III. SETTLEMENT STANDARDS AND PROCEDURE**

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

9 “In a class action lawsuit, the court undertakes the responsibility to assess
10 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
11 dismissal of a class action. The purpose of the requirement [of court review] is the
12 protection of those class members, including the named plaintiffs, whose rights may not
13 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
14 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
15 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
17 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
18 agreement to the extent necessary to reach a reasoned judgment that the agreement is
19 not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
21 concerned.”] [internal quotation marks omitted].

22 “The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
24 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
25 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small.’” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’
24 this is no bar to a class settlement because ‘the public interest may indeed be served by
25

1 a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.” *Id.* at 250.

3 4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5 6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

8 9 **1. The settlement was reached through arm’s-length bargaining**

10 In December 2020, the Parties decided to exchange informal discovery and
11 information in an effort to engage in early settlement discussions to determine if the
12 case could be resolved. Further, due to the simplified and limited nature of the claims
13 at issue, counsel for the Parties believed attempts at direct negotiations were
14 appropriate so that money that would have been spent on a mediator could instead be
15 used to pay an eventual settlement, if it could be reached. Ultimately, the parties
16 engaged in settlement discussions and agreed in principle on a class-wide and PAGA
17 resolution. (Declaration of Scott M. Lidman (“Lidman Decl.”) ¶12.) The parties
18 finalized and executed the Settlement Agreement on September 9, 2021. (See
19 Settlement Agreement pg. 32.)

20 21 **2. The investigation and discovery were sufficient**

22 Class Counsel represents that after agreeing to participate in early settlement
23 discussions, PRG informally produced information regarding the number of current and
24 former putative class members and allegedly-aggrieved employees, exemplars of its
25 wage statements issued during the relevant time period, information regarding the

1 changes PRG made to its wage statements in response to the claims made in this action,
2 the number of pay periods worked by putative class members during the Class Period,
3 and the number of pay periods worked by allegedly-aggrieved employees during the
4 PAGA Period. (Lidman Decl. ¶11.)

5 In addition, Class Counsel represents that because PRG was not legally required
6 to nor did keep track of rest periods, there was no data to produce regarding rest periods
7 allegedly taken or missed by the PAGA employees. Since the nature of the rest period
8 claim is that employees were required to remain on the premises for rest periods, there
9 was no existing internal PRG data that could be used to evaluate the claim. Class
10 Counsel represents that instead, PRG provided Plaintiff with its rest period policies as
11 well as legal authorities supporting Defendant's contention that Plaintiff's rest period
12 theory (i.e., that employees were not permitted to leave Defendant's premises during
13 rest periods) is not cognizable as a matter of law. (*Ibid.*)

14 Moreover, Class Counsel represents that without admitting that its wage
15 statements violated California Labor Code section 226(a)(8), on August 18, 2020,
16 Defendant cured any alleged deficiency pursuant to California Labor Code section
17 2699.3(c)(3) by re-issuing wage statements to its California employees from and after
18 January 1, 2019 to identify the employer as Production Resource Group, L.L.C. (*Ibid.*)
19 This is sufficient to value the case for settlement purposes.

20 21 **3. Counsel is experienced in similar litigation**

22 Class Counsel represent that they are experienced in class action litigation,
23 including wage and hour class actions. (*Id.* at ¶¶ 6-8; Declaration of Paul K. Haines ¶¶ 6-
24 7; Declaration of Milan Moore ¶4; Declaration of Elizabeth Nguyen ¶¶ 6-8.)

25 //

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

2 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
3 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
4 the court receive objections to the proposed settlement, it will consider and either sustain
5 or overrule them at the fairness hearing.”].
6

7 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
8 **FAIR, ADEQUATE, AND REASONABLE**
9

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

21 **1. Amount Offered in Settlement**

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

24 Class Counsel estimated Defendant’s maximum exposure at \$2,552,300 and
25 realistic exposure at \$602,512.50, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Wage Statement Claim	\$1,745,300.00	\$392,692.50
PAGA Penalties (Rest Period Claim)	\$807,000.00	\$209,820.00
Total	\$2,552,300.00	\$602,512.50

(Lidman Decl. ¶¶ 15-19.)

Class Counsel obtained a gross settlement valued at \$200,000. This is approximately 7.8% of Defendant's maximum exposure and 33.2% of Defendant's realistic exposure.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (¶2.6)

The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA, which was sent a copy of the Amended Settlement Agreement on February 10, 2022 and

1 has not yet objected. (Supp. Lidman Decl., Exhibit 6.) Any objection by it will be
2 considered at the final fairness hearing.

3 4 **3. The Releases Are Limited**

5 The Court has reviewed the Releases to be given by the absent class members and
6 the named plaintiff. The releases, described above, are tailored to the pleadings and
7 release only those claims in the pleadings. There is no general release by the absent
8 class. The named plaintiff's general release is appropriate given that he was represented
9 by counsel in its negotiation.

10 11 **4. Conclusion**

12 Class Counsel estimated Defendant's maximum exposure at \$2,552,300 and
13 realistic exposure at \$602,512.50. Class Counsel obtained a gross settlement valued at
14 \$200,000. This is approximately 7.8% of Defendant's maximum exposure and 33.2% of
15 Defendant's realistic exposure, which, given the uncertain outcomes, including the
16 potential that the class might not be certified, that liability is a contested issue, and that
17 the full amount of penalties would not necessarily be assessed even if the class is certified
18 and liability found, the settlement is within the "ballpark of reasonableness."

19 20 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

21 A detailed analysis of the elements required for class certification is not required,
22 but it is advisable to review each element when a class is being conditionally certified.
23 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
24 advocating class treatment must demonstrate the existence of an ascertainable and
25 sufficiently numerous class, a well-defined community of interest, and substantial

benefits from certification that render proceeding as a class superior to the alternatives.”
Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021.

1. The Proposed Class is Numerous

There are 808 putative Class Members. (Lidman Decl. ¶14.) Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a class action is liberally construed,*” and citing examples wherein classes of as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

2. The Proposed Class Is Ascertainable

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

The class is defined above. Class Members are ascertainable through Defendant’s records. (Lidman Decl. ¶14.)

3. There Is A Community of Interest

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

As to predominant questions of law or fact, Class Counsel represents that Plaintiff’s class claim arose from PRG’s common, uniform policies and practices that applied to Class Members during the class period. Specifically, Plaintiff alleged that

1 PRG's common and uniform policies and practices resulted in the failure to provide
2 accurate, itemized wage statements. (Lidman Decl. ¶15.)

3 As to typicality, Plaintiff represents that he has been employed by Defendant since
4 June 10, 2013 through the present, is subject to PRG's wage and hour policies and
5 practices, and received the same format of wage statements as other employees. He was
6 allegedly injured by the same challenged policies that allegedly injured the Settlement
7 Class as a whole. (Declaration of Jose Luis Topete Perez ¶¶ 2-4.)

8 As to adequacy, Plaintiff represents that he is aware of the risks of serving as class
9 representative, has been actively involved in the litigation, and has no conflicts with any
10 of the other Class Members. (*Id.* at ¶¶ 6-10.) As previously stated, Class Counsel have
11 experience in class action litigation.

12 13 **4. Substantial Benefits Exist**

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

16 17 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 18 **OF DUE PROCESS**

19 The purpose of notice is to provide due process to absent class members. A practical
20 approach is required, in which the circumstances of the case determine what forms of
21 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
22 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
23 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
24 stake of the individual class members; (4) the cost of notifying class members; (5) the
25

resources of the parties; (6) the possible prejudice to class members who do not receive notice; and (7) the res judicata effect on class members.

1. Method of class notice

No more than fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Employee List for purposes of mailing the Notice of Settlement to Class Members. Because employees' sensitive personal information is included in the Employee List, the Settlement Administrator shall maintain the Employee List securely in accordance with the Information Security and Services Agreement [attached as Exhibit D to the Settlement Agreement]. Access to such Employee List shall be limited to employees of the Settlement Administrator with a need to use the Employee List for administration of the Settlement. However, Class Counsel will be provided with the Employee List with specific identifying information (including the full names, last known addresses, last known telephone numbers, and social security numbers of the Class Members) redacted so that Class Counsel can review the estimated calculations and payments to be made to Class Members and ensure they are accurate so that Class Counsel can properly execute their fiduciary duties to the Class Members. (§3.6.4)

Upon receipt of the Employee List, the Settlement Administrator will conduct a national change of address search and a skip trace for the most current address of all former employee Class Members and PAGA Affected Employees and will update such former employees' addresses as necessary. Twenty-one (21) calendar days after receipt of the Employee List, the Settlement Administrator shall mail the Notice of Settlement to all Class Members by First Class U.S. Mail. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. (§3.6.5)

1 Any Notice of Settlement returned to the Settlement Administrator as non-
2 deliverable shall be re-mailed to the forwarding address affixed thereto. If no
3 forwarding address is provided, the Settlement Administrator shall make reasonable
4 efforts to obtain an updated mailing address. If an updated address is identified, the
5 Settlement Administrator shall resend the Notice of Settlement to the Class Member
6 within seven (7) calendar days of the date of the return of the Notice of Settlement. The
7 remailing of a Class Member's Notice of Settlement shall extend the Response Deadline
8 for that Class Member by fourteen (14) days. (¶3.6.7)

9 **2. Content of class notice.**

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

19 **3. Settlement Administration Costs**

20 Settlement administration costs are estimated at **\$10,000**, including the cost of
21 notice (¶1.37). Prior to the time of the final fairness hearing, the settlement
22 administrator must submit a declaration attesting to the total costs incurred and
23 anticipated to be incurred to finalize the settlement for approval by the Court.

24 //

25 //

1 **E. ATTORNEY FEES AND COSTS**

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

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

18 The question of class counsel’s entitlement to **\$66,666.66** (33 1/3%) in attorney
19 fees will be addressed at the final fairness hearing when class counsel brings a noticed
20 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
21 the court with current market tested hourly rate information and billing information so
22 that it can properly apply the lodestar method and must indicate what multiplier (if
23 applicable) is being sought.

24 Fee Split: Class Counsel represents that Plaintiff has provided written approval
25 of the split of attorneys’ fees in this action: 46.5% to Haines Law Group, APC, 31% to

1 Lidman Law, APC, and 22.5% to Michael Burgis & Associates, P.C. Michael Burgis
2 & Associates, P.C. is the referring attorney. (Lidman Decl. ¶22.)

3 Class counsel should also be prepared to justify the costs sought (capped at
4 **\$10,000**) by detailing how they were incurred.

5
6 **F. SERVICE AWARD**

7 The Settlement Agreement provides for a service award of up to **\$5,000** for the
8 class representative. Trial courts should not sanction enhancement awards of thousands
9 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
10 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
11 quantification of time and effort expended on the litigation, and in the form of reasoned
12 explanation of financial or other risks incurred by the named plaintiffs, is required in
13 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
14 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
15 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

16 The Court will decide the issue of the enhancement award at the time of final
17 approval.

18
19 **V. CONCLUSION AND ORDER**

20 The Court hereby:

- 21 (1) Grants preliminary approval of the settlement as fair, adequate, and
22 reasonable;
23 (2) Grants conditional class certification;
24 (3) Appoints Jose Luis Topete Perez as Class Representative;
25 (4) Appoints Lidman Law, APC and Haines Law Group, APC as Class Counsel;

1 (5) Appoints Simpluris, Inc. as Settlement Administrator;

2 (6) Approves the proposed notice plan; and

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

- 4 • Preliminary approval hearing: March 25, 2022
- 5 • Deadline for Defendant to provide class list to settlement administrator: April 9,
- 6 2022 (within 15 calendar days from preliminary approval)
- 7 • Deadline for settlement administrator to mail notices: May 2, 2022 (within 21
- 8 calendar days from preliminary approval)
- 9 • Deadline for class members to opt out: July 1, 2022 (60 calendar days from the
- 10 initial mailing of the Notice Packets)
- 11 • Deadline for class members to object: July 1, 2022 (60 calendar days from the
- 12 initial mailing of the Notice Packets)
- 13 • Deadline for class counsel to file motion for final approval: July 28, 2022 (16
- 14 court days prior to final fairness hearing)
- 15 • Final fairness hearing: August 19, 2022 at 9:00 a.m.

16
17
18 Dated:

3/25/2022



19 MAREN E. NELSON

20 Judge of the Superior Court
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22
23
24
25