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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CARLOS MUNGUIA and JOSE ESQUIVEL, as
individuals and on behalf of all others similarly
situated, and as private attorneys general,

Plaintiffs,

vs.

BLUE LINE FOODSERVICE DISTRIBUTION,
INC., a Michigan corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2020-01157719-CU-OE-CXC

[Hon. Lon F. Hurwitz, Department CX103]

~~AMENDED [PROPOSED]~~ ORDER
GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL JUDGMENT

Date: January 5, 2024
Time: 1:30 p.m.
Department: CX103

1 On or about September 13, 2023, Plaintiffs Carlos Munguia and Jose Esquivel filed a motion for
2 an Order Granting Final Approval of Class Action Settlement, and on October 6, 2023, a hearing was
3 held on this matter. After the Court addressed this matter with the Parties on October 6, 2023, the Court
4 requested that the Parties submit supplemental information, and on January 5, 2024, an additional
5 hearing was held on this matter.

6 The Court has considered the papers and evidence, including the Second Amended Joint
7 Stipulation of Class Action and PAGA Settlement and Release of Claims (the "Agreement") (ROA
8 #159, Ex. A), the arguments of counsel, and all other matters presented to the Court regarding final
9 approval of the settlement, approval of requested allocations from the settlement fund, and entry of final
10 judgment.

11 **I. Recital**

12 On September 28, 2020, Plaintiffs Carlos Munguia and Jose Esquivel initiated this class and
13 Labor Code Private Attorneys General Act of 2004 ("PAGA") action against Defendant, Blue Line
14 Foodservice Distribution, Inc. On behalf of a putative class of current and former employees of
15 Defendant in the State of California and as a proxy for the State, the lawsuit alleges that Defendant
16 underpays overtime and sick pay in workweeks in which Plaintiffs and other non-exempt employees
17 also earn incentives, bonuses, or "XATA Pay" (i.e., non-hourly, non-discretionary compensation). It
18 also alleges that whenever Plaintiffs and other non-exempt employees work overtime hours, Defendant
19 issues wage statements that do not accurately itemize and show (i) the overtime rate as 1.5 times the
20 regular rate or (ii) the total hours worked. Defendant denies the allegations.

21 **A. Class Members**

22 The Class is defined to include all members of the Regular Rate Subclass and Wage Statement
23 Subclass: (1) "Regular Rate Subclass" means all current and former non-exempt employees of
24 Defendant in the State of California who earned overtime wages or sick pay and non-discretionary
25 compensation in the same workweek at any time from April 6, 2016 through September 1, 2021, and
26 (2) "Wage Statement Subclass" means all current and former non-exempt employees of Defendant in the
27 State of California who were paid overtime wages at any time from April 6, 2019 through September 1,
28

2021. With one opt out from 115 Class Members,¹ there are 114 individuals that comprise the Settlement Class.

PAGA Group Members are defined to include all Class Members who worked from April 6, 2019, through September 1, 2021. There are 101 individuals that comprise the PAGA Group Members.

B. Operation of the Settlement

Pursuant to the Court's May 31, 2023 Preliminary Approval Order, the Court conditionally certified the Class and granted preliminary approval to the settlement. The Preliminary Approval Order also approved of the proposed forms of notice to the Class. The Court entered the Preliminary Approval Order after review and consideration of all of the pleadings filed in connection herewith, and the oral presentations made by counsel at the hearing. In compliance with the Preliminary Approval Order, the Notice of Class Action Settlement ("Class Notice") was sent to all Class Members via first class mail. The notice process was timely completed.

II. Finding

This Court finds that the Agreement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to any individuals. The Court further finds that the Agreement is fair, adequate, and reasonable and that Plaintiffs have satisfied the standards for final approval of a class action settlement under California law. Under the provisions of California Code of Civil Procedure section 382 and Rule 23 of the Federal Rules of Civil Procedure, as approved for use in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has discretion to certify a class where:

[Q]uestions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to the available methods for the fair and efficient adjudication of the controversy

FED. R. CIV. PROC. 23.

Certification of a settlement class is the appropriate judicial device under these circumstances.

III. Order

Good cause appearing **IT IS HEREBY ORDERED AND ADJUDICATED** as follows:

¹ The Class Member who opted out of the Settlement Class is Osvaldo Vargas.

1 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
2 Agreement.

3 2. The Court has jurisdiction over the subject matter of the litigation, the Class
4 Representatives, Settlement Class Members, and Defendant.

5 3. The Court finds that the dissemination of the Class Notice to the Class Members by the
6 appointed Settlement Administrator, Phoenix Settlement Administrators, constituted the best notice
7 practicable under the circumstances to all Class Members, and fully met the requirements of California
8 law and due process under the State and Federal Constitutions.

9 4. The Court approves the settlement of the above-captioned action, as set forth in the
10 Agreement, as fair, adequate, and reasonable to the Parties and Class Members. The Parties are directed
11 to perform in accordance with the terms set forth in the Agreement.

12 5. Except as otherwise provided in the Agreement, the Parties are to bear their own costs
13 and attorneys' fees.

14 6. The Court hereby certifies the following Class of all members of the Regular Rate
15 Subclass and Wage Statement Subclass: (1) "Regular Rate Subclass" means all current and former non-
16 exempt employees of Defendant in the State of California who earned overtime wages or sick pay and
17 non-discretionary compensation in the same workweek at any time from April 6, 2016 through
18 September 1, 2021, and (2) "Wage Statement Subclass" means all current and former non-exempt
19 employees of Defendant in the State of California who were paid overtime wages at any time from April
20 6, 2019 through September 1, 2021.

21 7. With respect to the Class and for purposes of approving the settlement only and for no
22 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so
23 numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to
24 the Class, and there is a well-defined community of interest among members of the Class with respect to
25 the subject matter of the non-exempt claims in the Action; (c) the claims of the Class Representatives
26 are typical of the claims of the members of the Class; (d) the Class Representatives have fairly and
27 adequately protected the interests of the members of the Class; (e) a class action is superior to other
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1 available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the
2 Class Representatives, i.e., Class Counsel, are qualified to serve as counsel for Plaintiffs in their
3 individual and representative capacities and for the Class.

4 8. Within 10 calendar days, Defendant shall deposit the Gross Settlement Amount of
5 \$250,000.00 with the Administrator, pursuant to the terms of the Agreement.

6 9. From the Gross Settlement Amount, the Administrator shall pay:

- 7 • to Class Counsel attorneys' fees in the amount of \$83,333.33 and reimbursement of
8 costs in the amount of \$6,403.21;
- 9 • to Class Representatives Carlos Munguia and Jose Esquivel for their unique services
10 to the Class, and as consideration for their execution of general releases, the amount
11 of \$5,000.00 each (for a total of \$10,000.00);
- 12 • to the California Labor and Workforce Development Agency the amount of
13 \$18,750.00 for its 75% share of PAGA Penalties; and
- 14 • to Phoenix Settlement Administrators the amount of \$6,000.00 for its fees and costs
15 in administering the settlement.

16 10. The Court finds that these amounts are fair and reasonable. The Administrator is directed
17 to make such payments in accordance with the terms of the Agreement.

18 11. The Court approves the Individual Settlement Payment and PAGA payment amounts,
19 which shall be distributed by the Administrator pursuant to the terms of the Agreement, after allocation
20 of the amounts set forth in Paragraph 9.

21 12. The Court hereby orders the parties to implement the terms of the Agreement, including
22 distributing the funds from any uncashed settlement checks to the State Unclaimed Property Fund in the
23 name of the recipient.

24 13. A Final Accounting is set for [September 13, 2024], at 1:30 p.m. in Department CX103
25 of this Court located at 751 West Santa Ana Boulevard, Santa Ana California 92701. At least 14
26 calendar days prior to the Final Accounting, Plaintiffs shall file a final report, including a declaration
27 from the Administrator establishing the status of distribution of settlement funds. The final report must
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1 include all information necessary for the Court to determine the total amount actually paid to Class
2 Members, PAGA Group Members, and all recipients.

3 14. All Class Members shall be bound by the releases provided in the Agreement. The Class
4 Representatives shall be bound by the additional general release provided in the Agreement.

5 15. The Administrator shall post a copy of the Judgment on its website for at least 30 days
6 from the date of judgment.

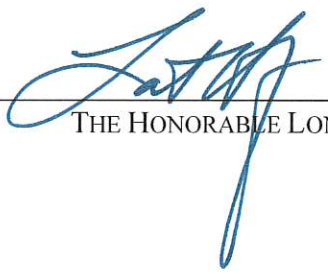
7 **IV. Judgment**

8 The Court hereby enters final judgment in this case in accordance with the terms of the
9 Settlement, Preliminary Approval Order, and this Order. Pursuant to Rule 3.769(h) of the California
10 Rules of Court, and without affecting the finality of the Settlement or Judgment entered, this Court shall
11 retain exclusive and continuing jurisdiction over the action and the Parties, including all Settlement
12 Class Members, for purposes of enforcing this Judgment.

13 Pursuant to Code of Civil Procedure section 668.5, judgment shall be entered as of the filing of
14 this judgment. This judgment makes no finding of any violation of the Labor Code, liability, or other
15 wrongdoing. None of the settlement or any of its terms, the order approving the settlement, or this
16 judgment are an admission of any liability or finding of any violation of the Labor Code.

17 **IT IS SO ORDERED AND ADJUDGED.**

18 DATED: JAN 24 2024, 2024

19 
THE HONORABLE LON F. HURWITZ