

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Larry W. Lee (State Bar No. 228175) / Simon L. Yang (State Bar No. 260286) FIRM NAME: Diversity Law Group, P.C. STREET ADDRESS: 515 South Figueroa Street, Suite 1250 CITY: Los Angeles STATE: CA ZIP CODE: 90071 TELEPHONE NO.: 213-488-6555 FAX NO.: 213-488-6554 E-MAIL ADDRESS: lwlee@diversitylaw.com / sly@diversitylaw.com ATTORNEY FOR (name): Plaintiffs Carlos Munguia and Jose Esquivel	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 W. Santa Ana Blvd. MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Civil Complex Center	
PLAINTIFF/PETITIONER: Carlos Munguia and Jose Esquivel DEFENDANT/RESPONDENT: Blue Line Foodservice Distribution, Inc. OTHER:	CASE NUMBER: 30-2020-01157719-CU-OE-CXC
PROPOSED ORDER (COVER SHEET)	JUDICIAL OFFICER: Lon F. Hurwitz DEPT: CX103

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Plaintiffs Carlos Munguia and Jose Esquivel

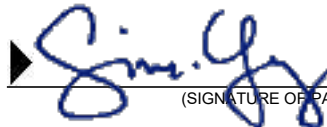
2. Title of the proposed order:
[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion for Preliminary Approval
 - b. Date and time: October 6 2023 at 1:30 p.m.
 - c. Place: Department CX103 of Orange County Superior Court

4. The proposed order was served on the other parties in the case.

Simon L. Yang

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:

Munguia, et al. v. Blue Line Foodservice Distribution

CASE NUMBER:

30-2020-01157719-CU-OE-CXC

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

515 South Figueroa Street, Suite 1250, Los Angeles, California 90071

b. My electronic service address is (*specify*): erika@diversitylaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

Gregory C. Cheng & Carolyn B. Hall, Attorneys for Defendant Blue Line Foodservice Distribution
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Embarcadero Center, Suite 900, San Francisco, California 94111

b. To (*electronic service address of person served*): Gregory.cheng@ogletree.com & Carolyn.hall@ogletree.com

c. On (*date*): September 13, 2023

☒ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 13, 2023

Eriak Mejia

(TYPE OR PRINT NAME OF DECLARANT)


 (SIGNATURE OF DECLARANT)

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Attorneys for Plaintiffs and the Class

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]

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

Date: October 6, 2023
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.

4 The Court has considered the papers and evidence, including the Second Amended Joint
5 Stipulation of Class Action and PAGA Settlement and Release of Claims (the “Agreement”), the
6 arguments of counsel, and all other matters presented to the Court regarding final approval of the
7 settlement, approval of requested allocations from the settlement fund, and entry of final judgment.

8 **I. Recital**

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

18 **A. Class Members**

19 The Class is defined to include all members of the Regular Rate Subclass and Wage Statement
20 Subclass: (1) “Regular Rate Subclass” means all current and former non-exempt employees of
21 Defendant in the State of California who earned overtime wages or sick pay and non-discretionary
22 compensation in the same workweek at any time from April 6, 2016 through September 1, 2021, and
23 (2) “Wage Statement Subclass” means all current and former non-exempt employees of Defendant in the
24 State of California who were paid overtime wages at any time from April 6, 2019 through September 1,
25 2021. With one opt out from 115 Class Members, there are 114 individuals that comprise the Settlement
26 Class.
27
28

1 **B. Operation of the Settlement**

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

9 **II. Finding**

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

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

19 FED. R. CIV. PROC. 23.

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

21 **III. Order**

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

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

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

27 3. The Court finds that the dissemination of the Class Notice to the Class Members by the
28 appointed Settlement Administrator, Phoenix Settlement Administrators, constituted the best notice

1 practicable under the circumstances to all Class Members, and fully met the requirements of California
2 law and due process under the State and Federal Constitutions.

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

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

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

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

25 8. Within 10 calendar days, Defendant shall deposit the Gross Settlement Amount of
26 \$250,000.00 with the Administrator, pursuant to the terms of the Agreement.

27 9. From the Gross Settlement Amount, the Administrator shall pay:
28

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

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

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

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

13. A compliance hearing is set for [July 26, 2024], at 1:30 p.m. in Department CX103 of this Court. At least 10 days prior to the compliance hearing, Plaintiffs shall file a declaration from the Administrator establishing the status of distribution of settlement funds.

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

IV. Judgment

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

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

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

6 DATED: _____, 2023

THE HONORABLE LON F. HURWITZ