

JOAQUIN SANTIBANEZ, and JORGE MAZARIEGOS, as individuals and on behalf of other similarly situated employees,

VS.

Defendants.

Case filed: August 17, 2020
Trial date: TBD

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1 THIS MATTER is before the Court on Plaintiff's Motion for Final Approval of Class
2 Action Settlement and her Motion for an Order Awarding Attorneys' Fees and Costs to
3 Plaintiff's Counsel and Enhancement Fee to the Class Representative. In accordance with the
4 Final Approval Order, Class Members have been given notice of the terms of the Settlement,
5 including had an opportunity to object to it, comment on it, participate in it, and/or exclude
6 themselves from it. Having considered the proposed Settlement, the award of attorneys' fees and
7 costs and the service award to the class representative, and the argument at the final approval
8 hearing held on June 2, 2022, the Court pursuant to Code of Civil Procedure § 382, hereby grants
9 Plaintiff's motion.

10 **I. FACTUAL BACKGROUND**

11 Plaintiffs Joaquin Santibanez and Jorge Mazariegos' initial complaint was filed on
12 August 17, 2020. Plaintiffs operative complaint maintains claims alleging violations regarding
13 inimum wags (Cause of Action No. 1), meal breaks (Cause of Action No. 1), failure to pay
14 timely wages (Cause of Action No. 3), failure to unlawfully receive wages, (Cause of Action
15 No. 4), failure to provide accurate wage statements (Cause of Action No. 5), failure to pay wages
16 upon termination (Cause of Action No. 6), claim for failure to reimburse nfor necessary business
17 expenses (Cause of Action No. 7), unlawful business practices (Cause of Action No. 8), violation
18 of the California Private Attorirney Generral Act (Cause of Action No. 9), claim for failure to
19 provide rest periods (Cause of Action No. 10).

20 After Plaintiff engaged in discovery and evaluated Defendants' documents and positions,
21 the parties entered into settlement negotiations, resulting in a signed Stipulation of Class Action
22 Settlement setting forth the terms of the proposed Settlement, which is before the Court. In
23 reaching the proposed Settlement, Defendant did not (and do not) concede that it has violated the
24 California Labor Code or the Business and Professions Code, and Defendant continues to deny
25 the allegations contained in Plaintiff's complaint.
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1 Plaintiff has moved this Court for final approval of the Settlement and has submitted
2 documents in support thereof. No opposition was filed to Plaintiff's motion, and no Class
3 Member objected to the Settlement. Plaintiff's motion came on for hearing before this Court on
4 June 2, 2022 at 10:00 a.m.

5 The Court, having fully considered Plaintiff's notice of motion and motion, the
6 memorandum of points and authorities in support thereof, the declarations in support thereof, the
7 Settlement Agreement itself, and the oral argument presented to the Court, HEREBY ORDERS
8 AND MAKES DETERMINATIONS AS FOLLOWS:

9 **II. ORDER GRANTING FINAL APPROVAL TO CLASS ACTION**
10 **SETTLEMENT**

11 The Court finds that certification of the following Class, for settlement purposes only, is
12 appropriate under the California Code of Civil Procedure:

13 The "Class" or "Class Members" is defined as:

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15 "All persons within the State of California who are or were employed by Defendant
16 in the State of California as a non-exempt hourly employee during August 17, 2016 to
17 June 14, 2021.'

18 The Court finds that the Class defined above meets ascertainability, numerosity,
19 commonality, and predominance requirements that justify certification, and that resolution of this
20 matter through a class action settlement is superior to other available methods.

21 The Court finds further that:

22 (1) Plaintiff is an adequate and typical Class Representative and appoints them as Class
23 Representative; and

24 (2) Plaintiff's Counsel has adequately represented the Class and its appointment as Class
25 Counsel is confirmed.

26 Accordingly, the Court certifies the Class described above for settlement purposes only.
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1 The Court has reviewed the terms of the Settlement and finds that the Settlement is fair,
2 adequate, and reasonable when balanced against the possible outcome of further litigation
3 relating to class certification, liability, and damages. The Court finds further that settlement at
4 this time will avoid substantial additional costs and will avoid the delay and risks presented by
5 continued prosecution of the litigation. The Court also finds that the settlement has been reached
6 after arm's length negotiations between the parties. (See Joint Stipulation of Settlement and
7 Release of Class Action Settlement attached as Exhibit A to the Declaration of Armond M.
8 Jackson in Support of Motion for Final Approval of Class Action Settlement filed on May 10,
9 2022) The terms of this operative settlement agreement shall be incorporated herein and
10 consistent with this Order and Judgment.

11 Following notice that was sent to the Class Member by first class mail, no Class member
12 objected to any of the terms of the Settlement and eleven Class Members opted out. Such non-
13 opposition to the settlement is evidence of the settlement's fairness, adequacy, and
14 reasonableness. Taking into account (1) the value of the \$184,000 cash settlement, (2) the risks
15 inherent in continued litigation, (3) the complexity, expense, and likely duration of the litigation
16 in the absence of settlement, (4) the experience and views of Class Counsel, and (5) the positive
17 reaction of Class Members, the Court finds that the settlement is fair, adequate, reasonable, and
18 deserves this Court's final approval.

20 **III. CLASS RELEASE**

21 Upon the Date of Final Approval, for the Settlement Period, Named Plaintiffs and all
22 members of the Settlement Class, except those that make a valid and timely request to be
23 excluded from the Settlement Class and Resolution, waive, release, and discharge, and promise
24 never to assert in any forum any and all wage-related claims against : (i) Defendant and each and
25 all of Defendant's past or present partners, parents, subsidiaries, or affiliates (regardless of
26 whether such partners, parents, subsidiaries, or affiliates are individuals, trusts, estates,
27 corporations, partnerships, limited partnerships, limited liability companies, or other forms of
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entity); (ii) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (i); (iii) any other individuals or entities of any kind, including but not limited to any payroll companies, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, integrated enterprise, or any other theory) for any actual or alleged violations described in the Litigation; and (iv) all past and present directors, officers, representatives, insurers, agents, shareholders, partners, members, lawyers, and employees of any of the individuals or entities identified in subparagraphs (i), (ii), or (iii), and any and all other entities with whom they have been, are now, or may hereafter be affiliated (hereinafter “Releasees”), from any and all claims, demands, rights, liabilities and causes of action of every nature that were alleged in the Litigation or which could have been alleged in the Litigation, whether known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal theory or type or amount of relief or damages claimed, which any Named Plaintiffs and all members of the Settlement Class now has, at any time ever had, or hereafter may have against any Releasee, and which in any way arises out of, is based on, or relates in any way to: (i) the facts asserted in the Litigation, including but not limited to: 1) Failure to Pay Wages and Overtime Compensation; 2) Failure to Pay Minimum Wages; 3) Failure to Timely Pay Wages Due At Termination and/or Resignation; 4) Failure to Provide Accurate Itemized Employee Wage Statements; 5) Meal and Rest Period Liability under Labor Code § 226.7; 6) Business Expense Reimbursements under Labor Code Section 2800 and 2802; 7) Violation of Business & Professions Code § 17200, et seq.; 8) Penalties Pursuant to PAGA (Labor Code § 2698, et seq.) under Labor Code sections 203, 210, 226(e), 226.3, 226.7, 226.8, 510, 558, 1174.5, 1194 and 2802; 9) Failure to Pay Vacation Wages; and 10) any other applicable provisions of state or federal law, including the applicable IWC wage orders, based on the facts alleged in the Litigation; (ii) attorneys’ fees due or allegedly due under Labor Code Section 218.5 or any other statute, regulation, or contractual provision; (iii) other claims that Named Plaintiffs or member of the Settlement Class has arising out of, based upon, or relating to the allegations contained in the

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

1 Litigation; and (iv) penalties or other payments which in any way arise out of, or are based on, or
2 relate in any way to any of the foregoing, including but not limited to penalties, premiums, or
3 payments under Labor Code Sections 203, 210, 226(e), 226.3, 226.7, 226.8, 558, 1174.5, 2800,
4 2802, the federal Fair Labor Standards Act, any California Industrial Commission Wage Order,
5 and/or any other statute or regulation regarding the payment of wages (hereinafter the “Settled
6 Claims”). Without in any way limiting the foregoing, Settled Claims shall include all claims,
7 liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses,
8 debts, actions, and causes of action under statutes and regulations set forth in this Section VII(A),
9 whether enforced directly or pursuant to Labor Code Section 2699, Business and Professions
10 Code Section 17200, et seq., or any other mechanism.

11 Without conceding that any release of claims under the Fair Labor Standards Act
12 (“FLSA”) requires any affirmative conduct or opt-in by the members of the Settlement Class, the
13 Parties agree that the cashing of checks by the members of the Settlement Class shall be deemed
14 an opt-in to an FLSA collective action, the settlement of which includes the FLSA releases
15 specified in this Section VII(A). However, nothing in this Section or elsewhere in this
16 Agreement shall preclude members of the Settlement Class from being bound by the releases in
17 this Agreement whether or not they receive or cash their checks.

18 **IV. OPT OUTS**

19 Following notice that was sent to the Class Member by first class mail, no Class member
20 objected to any of the terms of the Settlement and eleven Class Members opted out. One class
21 member opt-out of the settlement.

22 **V. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND COSTS**

23 Plaintiffs’ Counsel has moved for awards of (1) attorneys’ fees and costs to Plaintiff’s
24 Counsel; and (2) a service award to the Class Representatives, notice of which were given to all
25 Class Members pursuant to the Court’s Preliminary Approval Order. The Court read argument
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1 regarding Plaintiff's request for fees and service payments upon a duly noticed motion on June 2,
2 2022.

3 Based upon all papers filed with the Court, oral argument at the hearing, the Court's
4 observation and assessment of the performance of Plaintiff's Counsel throughout this litigation,
5 the resulting settlement recovery, and good cause appearing therefor, the Court finds that
6 payment of attorneys' fees in the amount of \$61,272 of the GSA and costs in the amount of
7 \$6,889.45 for all past and remaining work and costs until the completion of this matter, in
8 accordance with the terms of the Settlement, is fair and reasonable under the circumstances.

9 This amount shall be paid by Defendant according to the terms of the Joint Stipulation of
10 Settlement and Release of Class Action Settlement attached as Exhibit A to the Declaration of
11 Armond M. Jackson in Support of Motion for Final Approval of Class Action Settlement filed on
12 May 10, 2022.

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14 **VI. SERVICE AWARD TO THE CLASS REPRESENTATIVE**

15 Plaintiffs seek service awards to the class representatives, Plaintiff Jorge Mazariegos, in
16 the amount of \$5,000 and Joaquin Santibanez in the amount of \$5,000 and seeks this payment as
17 compensation for the time, effort, and risk she spent to enable the Class Members to receive this
18 recovery.

19 The Court notes that California and federal courts regularly approve service awards to
20 compensate the class representative for the services they provide to the class, the time and effort
21 they invest on behalf of others, and the risks that they incur during the course of class action
22 litigation.

23 Class Representatives performed a substantial service to Class members, including
24 bringing this action, producing relevant documents, and making herself available to and working
25 with Plaintiffs' Counsel throughout the action. In light of these services, the service award to the
26 class representative is appropriate. Although the proposed service award was disclosed to the
27 Class in the Notice, no class member objected to it. For the foregoing reasons, the Court finds
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1 that the service awards of \$5,000 each to Plaintiff Jorge Mazariegos and Plaintiff Joaquin
2 Santibanez is fair and reasonable considering their services to Class Members.

3 **VII. CLAIMS ADMINISTRATION COSTS**

4 Plaintiffs seek costs for the claims administrator in the amount of \$5,000 for all work
5 regarding distribution to the class members, LWDA and counsel for Plaintiff. This amount shall
6 be paid by Defendant according to the terms of the Joint Stipulation of Settlement and Release of
7 Class Action Settlement attached as Exhibit A to the Declaration of Armond M. Jackson in
8 Support of Motion for Final Approval of Class Action Settlement filed on May 10, 2022. For the
9 foregoing reasons, the Court finds that the administration costs of \$5,000 is fair and reasonable
10 considering its service to Class Members.

11 **VIII. PAYMENT TO LABOR AND WORKFORCE DEVELOPMENT AGENCY**

12 The Claims Administrator shall pay the LWDA \$7,500 (representing 75% of the
13 \$10,000 PAGA component of the Amended Settlement Agreement).

14 **IX. JUDGMENT FINALITY**

15 Without affecting the finality of this Judgment in any way, the Court shall retain
16 jurisdiction with respect to the implementation and enforcement of the terms of the Settlement
17 Agreement, and the Court shall retain jurisdiction over the Parties and the members of the Class
18 to enforce the terms, conditions and obligations of the Settlement Agreement.

19 This judgment is intended to be a final disposition of the above-captioned action in its
20 entirety with prejudice, and is intended to be immediately appealable. The court shall have and
21 retain continuing jurisdiction over this action and the parties and Class members, including after
22 entry of this Order, to the fullest extent necessary to interpret, enforce and effectuate the terms
23 and intent of the Settlement Agreement and this Order.

24 The Court orders class counsel to file a final report summarizing all distributions made
25 pursuant to the approved settlement, supported by declaration. The Court sets a hearing for a
26 final report for February 3, 2023 .
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1 The Court sets a non-appearance for January 27, 2023.

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4 Dated:

JUDGE OF THE SUPERIOR COURT

5 By: _____
6 The Honorable Judge Richard J. Sherman
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**[PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**