

FILED
LOS ANGELES SUPERIOR COURT

DEC 29 2022

CLERK OF COURT
BY: [Signature] Deputy
TANAYANAMARO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

VANESSA GONZALEZ, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

SEVEN FORTY ONE COMPANY, INC.,
MR. STAX, INC., and DOES 1 through
100, inclusive,

Defendants.

Case No.: 20STCV30761

**[TENTATIVE] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS**

Date: December 29, 2022

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiff Vanessa Gonzalez sues her former employer, Defendants Seven Forty One Company, Inc. and Mr. Stax, Inc. (collectively, "Defendants") for alleged wage and hour violations. Defendants operate IHOP restaurants throughout California.

1 Plaintiff seeks to represent a class of Defendants' current and former non-exempt
2 employees.

3 On August 12, 2020, Plaintiff filed her initial class action complaint. On
4 October 29, 2020, Plaintiff filed the operative First Amended Complaint ("FAC"),
5 alleging causes of action for: (1) unlawful failure to pay wages (Labor Code §§ 201-
6 204, 510, 558, 1194, 1198; IWC Wage Order); (2) failure to provide meal and rest
7 periods (Labor Code §§ 226.7, 512); (3) failure to provide accurate itemized wage
8 statements (Labor Code §§ 226, 1174); (4) failure to pay wages on termination (Labor
9 Code § 203); (5) unfair business practices under the Unfair Competition Act (Bus. &
10 Prof. Code §§ 17200-17208); and (6) Private Attorneys General Act claim (Labor Code
11 § 2699) ("PAGA").

12 On March 5, 2021, the Parties participated in a mediation before mediator Eve
13 Wagner. Following mediation, on April 7, 2021, with the assistance of the mediator's
14 evaluation, the Parties reached a settlement of the action. The terms were finalized in a
15 Joint Stipulation and Agreement for Class and Representative Action Settlement and
16 Release, a copy of which was filed with the Court.

17 On December 15, 2021, the Court issued a "checklist" to the parties pertaining to
18 deficiencies in Plaintiff's motion and the settlement. In response, the parties filed
19 further briefing, including the revised Settlement Agreement attached to the Declaration
20 of Scott Edward Cole filed April 29, 2022 ("Cole Decl.") as Exhibit 1.

21 On May 20, 2022, the Court issued another checklist regarding additional
22 deficiencies with Plaintiff's motion and the settlement. In response, the parties filed
23 additional briefing, including the further revised Settlement Agreement attached to the
24 Supplemental Declaration of Ryan C. McKim ("Supp. McKim Decl.") as Exhibit A.
25 All references below are to that agreement.

1 On September 26, 2022, the Court issued an additional checklist and on
2 September 29, 2022, called the matter for hearing to confer with counsel regarding
3 issues set forth in the checklist. In response, Plaintiff's counsel filed additional briefing
4 (see Supplemental Declaration of Scott Edward Cole filed December 16, 2022).

5 Now before the Court is Plaintiff's motion for preliminary approval of the
6 settlement. For the reasons set forth below, the Court preliminarily grants approval for
7 the settlement on condition that the parties address the following:

- 8
- 9 1. The Settlement Agreement must be signed by each party's counsel. (See
10 signature page of Settlement Agreement attached as Exhibit A to Supp. Decl.
11 of Ryan C. McKim filed August 31, 2022.)
 - 12 2. ~~On the Notice form,~~ ^{settlement agreement} revise and update the estimated cost of settlement
13 ~~administration to be consisted~~ ^{indicated on the} with the cost as stated in the most recent
14 ~~version of the Settlement Agreement (\$6,626.33).~~ ^{record by counsel to be \$9,351.}
 - 15 3. On the Notice at p. 4, Section V(3) (re: PAGA payment), revise the PAGA
16 Period definition to end on January 14, 2021 in consistency with Settlement
17 Agreement ¶1.7.
 - 18 4. If Defendant's share of payroll taxes are to be paid out of the Gross
19 Settlement Amount (see Settlement Agreement ¶1.29), provide an estimated
20 amount for the deduction and disclose it to Class Members on the notice.
 - 21 5. Ensure the notice accurately reflects the Court's current social distancing
22 procedures for attendance at hearings and review of court files. (Counsel
23 should check the Court website for most current information.)

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25 //

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

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

3 "Class" or "Class Members" means all current and former hourly or non-exempt
4 employees of Defendants who performed work at 880 S. Arroyo Pkwy, Pasadena, CA
5 91105 and/or 25060 Avenue Stanford, Suite 200, Valencia, CA 91355, at any time from
6 August 12, 2016 up to and including August 23, 2021, of which there are an estimated
7 170 total. (§1.4)

8 "Class Period" means the time period from August 12, 2016 up to and including
9 August 23, 2021. (§1.7)

10 "Settlement Class" or "Settlement Class Member(s)" or "Members of the
11 Settlement Class" means any, or collectively all Class Members who do not submit
12 timely and valid Requests for Exclusion to Opt Out of the Settlement. (§1.40)

13 The "PAGA Group Member(s)" is defined as all allegedly aggrieved non-
14 exempt and/or hourly-paid, current and former employees, who performed work at 880
15 S. Arroyo Pkwy, Pasadena, CA 91105 and/or 25060 Avenue Stanford, Suite 200,
16 Valencia, CA 91355, at any time during the PAGA Period. (§1.8)

17 "PAGA Period" means the time period from June 9, 2019 through January 14,
18 2021. (§1.9)

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

20 The essential monetary terms are as follows:

21 The Gross Settlement Amount ("GSA") is **\$190,000** (§1.17). This includes
22 payment of a PAGA penalty of **\$5,000** to be paid 75% to the LWDA (\$3,750) and 25% to
23 the Aggrieved Employees (\$1,250) (§§ 1.27, 6.1.d).
24
25

81,649.20

The Net Settlement Amount ("Net") (~~\$84,373.67~~) is the GSA less:

- Up to **\$66,500** (35%) for attorney fees (§4.4);
 - Up to **\$20,000** for attorney costs (*Ibid.*);
 - Up to **\$7,500** for a service award to the proposed class representative (§4.1); and
 - Estimated ~~\$6,626.33~~ ^{9,351} for settlement administration costs (~~§4.5~~ ^{as stated on the record});
- Employer-side payroll taxes will be paid from the GSA (§1.29).
 - Assuming the Court approves all maximum requested deductions, approximately ~~\$84,373.67~~ ^{81,649.20} will be available for distribution to participating class members.

Assuming full participation, the average settlement share will be approximately ~~\$496.31~~ ^{480.29}. (~~\$84,373.67~~ ^{81,649.20} Net ÷ 170 class members = ~~\$496.31~~). In addition, each PAGA Group Member will receive a portion of the PAGA penalty. (\$1,250 or 25% of \$5,000 PAGA penalty).

- There is no Claim Requirement (Notice pg. 1).
- The settlement is not reversionary (§6.5).
- Individual Settlement Share Calculation: The portion of the Net Settlement Amount payable to each Settlement Class Member will be calculated as follows: (§6.2)

- The Settlement Administrator will determine the total "Workweeks" for each Class Member. Workweeks are to be calculated by determining the number of days between the Class Member's start and end dates of employment during the Class Period (and only for work performed at 880 S. Arroyo Pkwy, Pasadena, CA 91 105 and/or 25060 Avenue Stanford, Suite 200, Valencia, CA 91355) and then dividing by seven (7). If a Class Member was hired prior to August 12, 2016, then his or her "start date"

1 will be August 12, 2016. (§6.2.a) The Settlement Administrator shall
2 divide the Net Settlement Amount by the total number of Workweeks of
3 all Settlement Class Members, (and only for work performed at 880 S.
4 Arroyo Pkwy, Pasadena, CA 91 105 and/or 25060 Avenue Stanford, Suite
5 200, Valencia, CA 91355) in order to determine the amount that each
6 Settlement Class Member is entitled to for each Workweek (the "Weekly
7 Amount"). (§6.2.b) The Settlement Administrator will multiply the
8 Weekly Amount by the total number of Workweeks that each Settlement
9 Class Member is credited with to arrive at his or her Individual Settlement
10 Amount. (§6.2.c)

- 11 ○ PAGA Payments: Each PAGA Group Member shall receive a portion of
12 the PAGA Group Payment on a pro-rata basis by multiplying the PAGA
13 Group Payment by the ratio of (i) the number of pay periods worked by
14 the PAGA Group Member any time during the PAGA Period to (ii) the
15 total number of pay periods worked by all PAGA Group Members during
16 the PAGA Period. (§6.2.2)

- 17 • Tax Withholdings: Each Individual Settlement Amount will be allocated as 20%
18 as wages, 80% as interest and penalties (§6.3). Each PAGA Group Member shall
19 be solely responsible for any and all his or her share of tax obligations associated
20 with his or her respective of a portion of the PAGA Group Payment. (§6.2.2)
- 21 • Funding and Distribution of Settlement: Within fifteen (15) calendar days after
22 the Effective Date, Seven Forty One Company, Inc. shall provide the Settlement
23 Administrator with the Gross Settlement Amount and the Settlement
24 Administrator shall promptly deposit the Gross Settlement Amount into a
25 qualified settlement account established by the Settlement Administrator. No

1 later than five (5) calendar days after the Settlement Administrator deposits the
2 Gross Settlement Amount into the qualified settlement account, the Settlement
3 Administrator shall distribute the following payments: Individual Settlement
4 Payments to Settlement Class Member, Attorneys' Fees and Expenses to Class
5 Counsel, Service Award to Class Representative, LWDA Payment to the
6 LWDA, and PAGA Group Members' respective shares of the PAGA Group
7 Payment, all in the Court-approved amounts. (§6.4)

- 8 • **Uncashed Settlement Payment Checks:** Individual Settlement Payment checks
9 and checks for PAGA Group Members' respective shares of the PAGA Group
10 Payment shall be valid for a period of one hundred and eighty (180) calendar
11 days after they are mailed, and thereafter, will be cancelled. Funds associated
12 with cancelled checks will be donated to Bet Tzedek, an organization that
13 provides legal aid to low-income individuals and families including related to
14 employment issues. (§6.5)
 - 15 ○ The parties and their respective counsel represent that they have no
16 interest or involvement in the governance or work of Bet Tzedek. (Cole
17 Decl. ¶32; Supp. Decl. of Vanessa Gonzalez ¶2; Decl. of Ryan C. McKim
18 ¶¶ 2-3; Decl. of Mark Justice ¶2; Decl. of Maria Wren ¶2.)

20 **C. TERMS OF RELEASES**

- 21 • Release of Claims by Settlement Class Members, PAGA Group Members, and
22 Plaintiff. Upon the Effective Date, each Settlement Class Member and Plaintiff,
23 each release, discharge, and agree to hold harmless the Released Parties, and
24 each of them, of and from any and all Released Claims. Upon the Effective Date,
25 each PAGA Group Member and Plaintiff, each release, discharge, and agree to

1 hold harmless the Defendants, and each of them, of and from any and all
2 Released PAGA Claims. (§9.1)

3 ○ Plaintiff and each Class Member (except those who submit a timely and
4 valid Request for Exclusion), will be bound to the release of Released
5 Claims as a result of the Settlement and to the terms of the judgment.
6 However, to the extent that a Class Member is also a PAGA Group
7 Member, he or she will be bound by the release of Released PAGA
8 Claims and will receive a portion of the PAGA settlement,
9 notwithstanding his or her Request for Exclusion. (*Ibid.*)

10 ○ No release in this Settlement shall be effective until the Gross Settlement
11 Amount is fully funded. (*Ibid.*)

- 12 • "Released Claims" means any and all federal and California state law wage-and-
13 hour claims, rights, demands, liabilities, and/or causes of action of every nature
14 and description arising from any and all claims that were alleged or could have
15 been alleged in the Complaint based on the facts contained therein only, arising
16 during the Class Period, including, without limitation, statutory, constitutional,
17 contractual, and/or common law claims for wages, reimbursements, damages,
18 unpaid costs, penalties (including penalties under the California Labor Code's
19 Private Attorneys General Act of 2004, as amended, California Labor Code §§
20 2698, et seq.), liquidated damages, punitive damages, interest, attorneys' fees,
21 litigation costs, restitution, or equitable relief, including without limitation,
22 California Labor Code §§ 200, 201, 202, 203, 204, 218, et seq., 218.5, 226, et
23 seq., 226.7, 510, 512, 558, 1174, 1174(d), 1174.5, 1182.12, 1194, et. seq., 1197,
24 et seq., 1197.1, 1198, 2698, et seq., 2699, 2699.3, and any federal counterparts,
25 California Business and Professions Code §§ 17200-17208, any IWC Wage

1 Orders, California Code of Civil Procedure § 1021.5, any claims for meal and
2 rest period violations; unpaid minimum wages or overtime wages; untimely pay
3 during and at termination of employment, unreimbursed business expenses,
4 record-keeping violations, and/or inaccurate pay stubs arising under Labor Code
5 section 226; and any unlawful deductions; and causes of action for (i) unlawful
6 failure to pay wages (Labor Code §§ 200-204, 510, 558, 1194; IWC Wage
7 Order); (ii) Failure to provide meal and rest periods (Labor Code §§ 226.7, 512);
8 (iii) Failure to provide itemized wage statements (Labor Code §§ 226, 1174);
9 (iv) Failure to timely pay wages on termination (Labor Code § 203); (v) Unfair
10 business practices under the Unfair Competition Act (Bus. & Prof. Code §§
11 17200-17208); and (vi) Private Attorneys General Act of 2004 (Labor Code §§
12 2698, et seq.). (§1.32)

13 ○ "Released Claims" shall only refer to employment claims (as enumerated
14 above) arising out of labor performed at 880 S. Arroyo Pkwy, Pasadena,
15 CA 91105 and/or 25060 Avenue Stanford, Suite 200, Valencia, CA
16 91355. (*Ibid.*)

17 ○ "Complaint" shall mean the First Amended Class Action Complaint for
18 Damages and Enforcement Under the Private Attorneys General Act, Cat.
19 Labor Code §§ 2698, et seq., filed on October 29, 2020. (§1.11)

- 20 • "Released PAGA Claims" means any and all claims, demands, rights, liabilities,
21 and/or causes of action for penalties under the California Private Attorneys'
22 General Act that accrued during the PAGA Period and that were asserted in
23 Plaintiff's LWDA notice letter dated August 12, 2020, a copy of which is
24 attached [to the Declaration of Scott Edward Cole filed April 29, 2022] as
25 Exhibit 3, or the Complaint as well as those that could have been alleged in the

1 Complaint based on the facts contained therein, including, without limitation,
2 Labor Code sections 200, 201, 202, 203, 204, 218, et seq., 218.5, 226, et seq.,
3 226.7, 510, 512, 558, 1174, 1174(d), 1174.5, 1182.12, 1194, et. seq., 1194.2,
4 1197, et seq., 1197.1, 1198, 2698, et seq., 2699, 2699.3, and 2802. (§1.33)

- 5 • "Released Parties" shall mean Defendants and all of their respective current and
6 former parents, subsidiaries, predecessors, successors, and their affiliated
7 entities, and each of their respective owners, officers, directors, partners,
8 shareholders, agents, and any other successors, heirs, assigns, or legal
9 representatives, any attorneys, insurers, claims representatives, members,
10 managers, dba's, and representatives, and any of their, direct or indirect, parent
11 or subsidiary entities. (§1.34)
- 12 • The named Plaintiff will also provide a general release and a waiver of the
13 protections of Cal. Civ. Code §1542. (§9.2)
- 14 • The releases are effective upon the Effective Date, which encompasses the date
15 that the GSA is fully funded. (§1.14) No release in this Settlement shall be
16 effective until the Gross Settlement Amount is fully funded. (§9.1) Funding will
17 occur within fifteen (15) calendar days after the Effective Date. (§6.4)

18 19 **D. SETTLEMENT ADMINISTRATION**

- 20 • The proposed Settlement Administrator is Simpluris, Inc. (§1.39), which has
21 provided evidence that no counsel are affiliated with it and that it has adequate
22 procedures in place to safeguard the data and funds to be entrusted to it. (See
23 Declaration of Settlement Administrator filed April 29, 2022.)
- 24 • Settlement administration costs are estimated to be \$6,626.33 (§4.5).
- 25 • Notice: The manner of giving notice is described below.

- Opt Out/Objection Dates: "Response Deadline" means the deadline for a Class Member to submit a Request for Exclusion, Objection, and/or Workweeks Dispute, by mail to the Settlement Administrator, which is no later than forty-five (45) calendar days after the Class Notice is mailed to the Class. (§1.36)
 - If ten percent (10%) or more of the Class Members submit timely and valid Requests for Exclusion, Defendants shall have the option, in their sole discretion, to rescind this Stipulation. (§7.2)
- Notice of Final Judgment will be posted on the Settlement Administrator's website (Notice p. 2).

III. SETTLEMENT STANDARDS AND PROCEDURE

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

"In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,

1 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
2 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
3 agreement to the extent necessary to reach a reasoned judgment that the agreement is
4 not the product of fraud or overreaching by, or collusion between, the negotiating
5 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
6 concerned.”] [internal quotation marks omitted].

7 “The burden is on the proponent of the settlement to show that it is fair and
8 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
9 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
10 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
12 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

13 Notwithstanding an initial presumption of fairness, “the court should not give
14 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
15 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
16 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
17 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
18 members, the court must independently and objectively analyze the evidence and
19 circumstances before it in order to determine whether the settlement is in the best
20 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
21 In that determination, the court should consider factors such as “the strength of
22 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
23 the risk of maintaining class action status through trial, the amount offered in
24 settlement, the extent of discovery completed and stage of the proceedings, the
25 experience and views of counsel, the presence of a governmental participant, and the

1 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
2 factors is not exclusive and the court is free to engage in a balancing and weighing of
3 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
4 245.

5 At the same time, “[a] settlement need not obtain 100 percent of the damages
6 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
7 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
8 substantially narrower than it would be if the suits were to be successfully litigated,’
9 this is no bar to a class settlement because ‘the public interest may indeed be served by
10 a voluntary settlement in which each side gives ground in the interest of avoiding
11 litigation.’” *Id.* at 250.

12 13 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

14 15 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

17 18 **1. The settlement was reached through arm’s-length bargaining**

19 On March 5, 2021, the parties participated in a mediation before mediator Eve
20 Wagner. Following mediation, on April 7, 2021, with the assistance of the mediator's
21 evaluation, the parties reached a settlement of the action. (Cole Decl. ¶16.)

22 23 **2. The investigation and discovery were sufficient**

24 Class Counsel represents that the parties engaged in formal discovery, informal
25 discovery and the exchange of documents and information, which included and was not

1 limited to, Seven Forty One Company, Inc.'s production of a sampling of
2 information/data for 19% of the putative class members. Prior to mediation, the parties
3 exchanged information and documents, and Plaintiff's counsel interviewed Plaintiff and
4 reviewed publicly available information about Defendants. (*Id.* at ¶18.) Defendants
5 provided Plaintiff with the following: (a) Seven Forty One Company, Inc.'s employee
6 handbook; (b) Seven Forty One Company, Inc.'s job descriptions for the general
7 manager, kitchen manager, cooks, crew chiefs, combos, servers, and hosts/hostesses;
8 (c) Plaintiff's personnel file; (d) clock in and clock out records and related wage
9 statements for a random sampling of 19% of the putative class members; and (e) Seven
10 Forty One Company, Inc.'s verified responses to Plaintiffs special interrogatories and
11 requests for production, and the responsive documents produced. Counsel also
12 conducted online research, referenced publicly available records, and interviewed
13 witnesses. (Supp. Cole Decl. ¶3.) This is sufficient to value the case for settlement
14 purposes.

15 16 **3. Counsel is experienced in similar litigation**

17 Class Counsel represent that they are experienced in class action litigation,
18 including wage and hour class actions. (*Id.* at ¶¶ 9-10.)

19 20 **4. Percentage of the class objecting**

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

1 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
2 **FAIR, ADEQUATE, AND REASONABLE**

3
4 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
5 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
6 does when it approves a settlement as in good faith under Code of Civil Procedure
7 section 877.6, the court must at least satisfy itself that the class settlement is within the
8 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
9 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
10 consider and weigh the nature of the claim, the possible defenses, the situation of the
11 parties, and *the exercise of business judgment* in determining whether the proposed
12 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
13 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

14
15 **1. Amount Offered in Settlement**

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

18 Class Counsel estimated Defendant’s maximum exposure at \$741,216, based on
19 the following analysis:

20

Violation	Maximum Exposure
Failure to Pay Overtime and Minimum Wages	No Value
Failure to Pay Meal and Rest Period Wages	\$30,030.00
Failure to Provide Accurate Itemized Wage Statements	\$110,650.00
Failure to Pay Wages on Termination	\$171,600.00
PAGA Claim	\$428,936.00

21
22
23
24
25

1 **Total**

\$741,216.00

2 (Cole Decl. ¶34; Supp. Cole Decl. ¶2.)

3 Class Counsel obtained a gross settlement valued at \$190,000. This is
4 approximately 25.6% of Defendant's maximum exposure including discretionary
5 potential PAGA penalties.

6
7 **2. The Risks of Future Litigation**

8 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
9 motion practice and appeals) are also likely to prolong the litigation as well as any
10 recovery by the class members. Even if a class is certified, there is always a risk of
11 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
12 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
13 conducting class actions, which means, under suitable circumstances, entertaining
14 successive motions on certification if the court subsequently discovers that the propriety
15 of a class action is not appropriate."].) Further, the settlement was negotiated and
16 endorsed by Class Counsel who, as indicated above, are experienced in class action
17 litigation. Based upon their investigation and analysis, the attorneys representing
18 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
19 adequate. (Cole Decl. ¶22.)

20 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
21 which was sent a copy of the revised Settlement Agreement on August 31, 2022 and has
22 not yet objected. (Proof of Submission to the LWDA filed August 31, 2022.) Any
23 objection by it will be considered at the final fairness hearing.

24 //

25 //

1 **3. The Releases Are Limited**

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

7
8 **4. Conclusion**

9 Class Counsel estimated Defendant's maximum exposure at \$741,216. Class
10 Counsel obtained a gross settlement valued at \$190,000. This is approximately 25.6% of
11 Defendant's maximum exposure, which, given the uncertain outcomes, including the
12 potential that the class might not be certified, that liability is a contested issue, and that
13 the full amount of penalties would not necessarily be assessed even if the class is certified
14 and liability found, the settlement is within the "ballpark of reasonableness."

15
16 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

17 A detailed analysis of the elements required for class certification is not required,
18 but it is advisable to review each element when a class is being conditionally certified.
19 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
20 advocating class treatment must demonstrate the existence of an ascertainable and
21 sufficiently numerous class, a well-defined community of interest, and substantial
22 benefits from certification that render proceeding as a class superior to the alternatives."
23 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

24 //

25 //

1 **1. The Proposed Class is Numerous**

2 There are approximately 170 putative Class Members. (Cole Decl. ¶37.)
3 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
4 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
5 *parties to a class action is liberally construed,*” and citing examples wherein classes of
6 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
7 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

8 **2. The Proposed Class Is Ascertainable**

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

14 The class is defined above. Class Members are ascertainable through
15 Defendants’ records. (Cole Decl. ¶37.)

16 **3. There Is A Community of Interest**

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

21 As to predominant questions of law or fact, Class Counsel asserts that common
22 issues of facts and law predominate as to each of the claims alleged by Plaintiff on behalf
23 of the Class, because the issue of the legality of Defendant's policies and practices is an
24 issue that predominates the claims of all Class Members. (Cole Decl. ¶36.)
25

1 As to typicality, Class Counsel asserts that Plaintiff's claims are typical of the
2 Class. At all times during their employment with Seven Forty One Company, Inc,
3 Plaintiff performed the same or similar duties as other Class Members and contend that
4 they were non-exempt employees, just like other Class Members. Plaintiff were subject
5 to the same handbooks and policies and procedures during the Class Period, which they
6 contend were similarly applicable to all other Class Members. (*Id.* at ¶37.)

7 As to adequacy, Plaintiff represents that she is aware of her duty as class
8 representative and has participated in the litigation. (Declaration of Vanessa Gonzalez
9 ¶¶5-9.) As previously stated, Class Counsel have experience in class action litigation.

10 **4. Substantial Benefits Exist**

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

13 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 14 **OF DUE PROCESS**

15
16 The purpose of notice is to provide due process to absent class members. A practical
17 approach is required, in which the circumstances of the case determine what forms of
18 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
19 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
20 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
21 stake of the individual class members; (4) the cost of notifying class members; (5) the
22 resources of the parties; (6) the possible prejudice to class members who do not receive
23 notice; and (7) the res judicata effect on class members.

24 //

25 //

1 **1. Method of class notice**

2 Seven Forty One Company, Inc. shall prepare the Class List for the Settlement
3 Administrator. By approving this Settlement, the Court will be deemed to have
4 authorized Defendants to provide the Settlement Administrator with this information,
5 including the social security numbers of the Class Members. Defendants shall provide
6 this list to the Settlement Administrator within fifteen (15) calendar days of the
7 Preliminary Approval Date. The Class List, and any other data provided by Defendants
8 to the Settlement Administrator shall be treated as confidential and not subject to
9 disclosure by the Settlement Administrator, except as necessary to address disputes
10 regarding Workweeks, to respond to a specific inquiry from a Class Member, and/or as
11 otherwise necessary for the Settlement Administrator to perform their obligations
12 described in the agreement. Further, the Settlement Administrator shall use
13 commercially reasonable efforts to secure the data provided by Defendants at all times
14 so as to avoid inadvertent or unauthorized disclosure or use of such data other than as
15 permitted by this Stipulation, and shall destroy the data (and all copies of it) in a
16 complete and secure manner when such data is no longer required for purposes of this
17 Stipulation. (§5.2.b)

18 If, by entering the Preliminary Approval Order, the Court provides authorization
19 to send the Class Notices, the Settlement Administrator will undertake the mailing of
20 the Class Notice to all Class Members, no later than twenty (20) calendar days after the
21 Preliminary Approval Date. (§5.2.a) Prior to mailing the Class Notice, the Settlement
22 Administrator shall undertake a NCOA check to ascertain the accuracy of the Last
23 Known Address of the Class Members. (§5.2.c)

24 Unless the administrator receives a Class Notice returned from the USPS for
25 reasons discussed below in this paragraph, the Notice shall be deemed mailed and

1 received by the Class Member to whom it was sent 5 calendar days after mailing. In the
2 event that subsequent to the first mailing of a Notice and prior to the Response
3 Deadline, that Notice is returned to the administrator by the USPS as undeliverable,
4 without a forwarding address, the administrator shall undertake an Experian Skip
5 Tracing with respect to the Class Member to attempt to ascertain the current address of
6 the particular Class Member in question and, if such an address is ascertained, the
7 administrator will re-send the Notice to the newly-found address within 3 business days
8 of receipt of the returned Notice. In the event that subsequent to the first mailing of a
9 Notice and prior to the Response Deadline that Class Notice is returned to the
10 Settlement Administrator by the United States Postal Service with a forwarding address
11 for the recipient, the Settlement Administrator shall re-mail the notice to that address
12 within three (3) business days of receipt of the returned Class Notice, and the
13 forwarding address shall be deemed the Updated Address for that Class Member. In
14 either event, the Class Notice shall be deemed received once it is mailed for the second
15 time. (¶5.2.e)

16 In the event that subsequent to the first mailing of a Class Notice it is returned to
17 the Settlement Administrator by the United States Postal Service as undeliverable, after
18 the Response Deadline, the Settlement Administrator shall be required to take no
19 further action with respect to that Class Notice and it shall be deemed to have been
20 delivered. In the event the Settlement Administrator must re-mail any Class Notice
21 pursuant to the provisions of this Paragraph due to being returned, the Response
22 Deadline shall be extended by ten (10) calendar days from the date of the re-mailing of
23 the Class Notice, for those mailings. (*Ibid.*)

24 //

25 //

1 **2. Content of class notice.**

2 A copy of the proposed class notice is attached to the Settlement Agreement as
3 Exhibit 1. The notice includes information such as: a summary of the litigation; the
4 nature of the settlement; the terms of the settlement agreement; the maximum
5 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
6 the enhancement award, and claims administration costs); the procedures and deadlines
7 for participating in, opting out of, or objecting to, the settlement; the consequences of
8 participating in, opting out of, or objecting to, the settlement; and the date, time, and
9 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
10 given in English, Spanish, and Vietnamese (§5.1).

11 Certain clarifications are required, to wit:

- 12 1. ~~Revise and update the estimated cost of settlement administration to be~~
13 consisted with the cost as stated in the most recent version of the Settlement
14 Agreement (\$6,626.33).
- 15 2. At p. 4, Section V(3) (re: PAGA payment), revise the PAGA Period
16 definition to end on January 14, 2021 in consistency with Settlement
17 Agreement ¶1.7.
- 18 3. If Defendant's share of payroll taxes are to be paid out of the Gross
19 Settlement Amount (see Settlement Agreement ¶1.29), provide an estimated
20 amount for the deduction and disclose it to Class Members on the notice.
- 21 4. Ensure the notice accurately reflects the Court's current social distancing
22 procedures for attendance at hearings and review of court files. (Counsel
23 should check the Court website for most current information.)

24 // Counsel indicate the integration clause
25 // must be corrected. This may be done
 by amendment. *[Signature]*

3. Settlement Administration Costs

Settlement administration costs are estimated at **\$6,626.33**, including the cost of notice (§4.5). Prior to the time of the final fairness hearing, the settlement administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

E. ATTORNEY FEES AND COSTS

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

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

The question of class counsel’s entitlement to **\$66,500** (35%) in attorney fees will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
2 the court with current market tested hourly rate information and billing information so
3 that it can properly apply the lodestar method and must indicate what multiplier (if
4 applicable) is being sought.

5 Class counsel should also be prepared to justify the costs sought (capped at
6 \$20,000) by detailing how they were incurred.

7
8 **F. SERVICE AWARD**

9 The Settlement Agreement provides for a service award of up to \$7,500 for the
10 class representative. Trial courts should not sanction enhancement awards of thousands
11 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
12 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
13 quantification of time and effort expended on the litigation, and in the form of reasoned
14 explanation of financial or other risks incurred by the named plaintiffs, is required in
15 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
16 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
17 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

18 In connection with the final fairness hearing, the named Plaintiff must submit a
19 declaration attesting to why they should be compensated for the expense or risk they
20 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

21 The Court will decide the issue of the enhancement award at the time of final
22 approval.

23 //

24 //

25 //

1 **V. CONCLUSION AND ORDER**

2 Contingent upon the parties addressing the above-listed issues by January 15,
3 2023, the Court hereby:

4 (1) Grants preliminary approval of the settlement as fair, adequate, and
5 reasonable;

6 (2) Grants conditional class certification;

7 (3) Appoints Vanessa Gonzalez as Class Representative;

8 (4) Appoints Cole & Van Note as Class Counsel;

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

10 (6) Approves the proposed notice plan; and

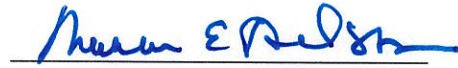
11 (7) Approves the proposed schedule of settlement proceedings as follows:

- 12 • Preliminary approval hearing: December 29, 2022
- 13 • Deadline for Defendant to provide class list to settlement administrator: January
- 14 13, 2023 (within 15 calendar days from preliminary approval)
- 15 • Deadline for settlement administrator to mail notices: January 18, 2023 (within
- 16 20 calendar days from preliminary approval)
- 17 • Deadline for class members to opt out: March 4, 2023 (45 calendar days from
- 18 the initial mailing of the Notice Packets)
- 19 • Deadline for class members to object: March 4, 2023 (45 calendar days from the
- 20 initial mailing of the Notice Packets)
- 21 • Deadline for class counsel to file motion for final approval:
- 22 3/24, 2023 (16 court days prior to final fairness hearing)
- 23 • Final fairness hearing: 4/18/, 2023, at 9:00 a.m.

24 //

1 Failure to fully and timely comply with the contingencies may result in the
2 revocation of this Order in its entirety.

3
4 Dated: 12/29/22



5 MAREN E. NELSON

6 Judge of the Superior Court
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