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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

RICARDO RAMIREZ, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

VICTORY DESIGN, INC. DBA DESIGNING MANUFACTURING INSTALLATION, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

RICARDO RAMIREZ, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

VICTORY DESIGN, INC. DBA DESIGNING MANUFACTURING INSTALLATION, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVDS2019970 (Class Action)
[Consolidated with Case No. CIVSB2100178]

Honorable Joseph T. Ortiz
Department S-17

CLASS ACTION

SUPPLEMENTAL DECLARATION OF HELENE MAYER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[Revised Proposed] Order filed concurrently herewith]

Hearing Date:	October 18, 2024
Hearing Time:	1:30 p.m.
Department:	S-17
Class Action Filed:	September 21, 2020
PAGA Action Filed:	January 8, 2021
Trial Date:	None Set

SUPPLEMENTAL DECLARATION OF HELENE MAYER

I, Helene Mayer, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Ricardo Ramirez ("Plaintiff"). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

2. On August 2, 2024, Plaintiff filed his Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion for Preliminary Approval") and supporting documents seeking preliminary approval of the settlement reached by Plaintiff and Victory Design, Inc. DBA Designing Manufacturing Installation ("Defendant") (collectively, the "Parties"). The Motion for Preliminary Approval was scheduled for hearing on September 18, 2024.

3. On September 17, 2024, the Court issued a Tentative Ruling on the Motion for Preliminary Approval Hearing, which became the Order of the Court on September 18, 2024 ("September 18, 2024 Order") wherein the Court raised certain points of inquiry regarding the settlement. A true and correct copy of the September 18, 2024 Order is attached hereto as "**EXHIBIT 1**."

ATTORNEYS' FEES PAYMENT

4. By way of the September 18, 2024 Order, the Court flagged that the Settlement provides for attorneys' fees equal to thirty-five percent (35%) of the Total Settlement Amount, without a basis for the proposed upward departure. (September 18, 2024 Order, p. 4.)

5. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount of $800,000.00, which is currently estimated to be $280,000.00, subject to approval by the Court. Plaintiff has signed retainer agreements agreeing to attorneys' fees of at least thirty-five percent (35%). Class Counsel has conducted significant investigations, formal and informal discovery, and extensive settlement negotiations. The allocated maximum amount is for all past and future attorneys' fees necessary to prosecute, settle, and administer the Action and the Settlement. The "future" aspect of these amounts includes, without limitation, all time expended by Class Counsel in implementing

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the Settlement and securing preliminary and final approval (including any appeals therein). There will be no additional consideration paid by Defendant for such work; although such work may cause Class Counsel's lodestar to increase, Class Counsel will be limited to the maximum Attorneys' Fees payment provided for under the Settlement, subject to the Court's approval.

6. Ultimately, the award of attorneys' fees is made by the court at the final approval hearing, using either lodestar method or the percentage method, or both. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 48, 486 & 506; *PLCM Group, Inc. v. Drexler (2002) 221 Cal.4th 1084, 1095-96; Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-26*; Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-36. Therefore, the question of whether Class Counsel is entitled to an attorneys' fee award in an amount up to $280,000.00 should be addressed when Class Counsel brings an application for attorneys' fees to be decided at the final approval hearing, after Class Members have had an opportunity to receive notice and an opportunity to comment on the Settlement. Additional details, evidence, and briefing, including the tasks performed and hours spent on this matter, to support the requested attorneys' fees will be provided at the time of filing Plaintiff's motion for final approval of the Settlement and application for Attorneys' Fees and Litigation Costs at the time of the Final Approval Hearing.

ESTIMATE OF THE VALUE OF THE CLAIMS

7. By way of the September 18, 2024 Order, the Court requested Plaintiff to provide a description of the value of the claims pursuant to *Kullar v. Foot Locker*, 168 Cal.App.4th 116. (September 18, 2024 Order, p. 4.)

8. By way of the above-captioned action, Plaintiff's alleged that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiff and the putative class members, including *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment, failing to timely pay wages upon termination and associated waiting-time penalties, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses. Plaintiff further contends

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that Defendant's aforementioned conduct constitutes unfair business practices under the California Business and Professions Code ("UCL") and gives rise to civil penalties recoverable under PAGA.

9. Based on data provided by Defendant as of February 2023 and in advance of mediation, the total number of putative class members during the period from September 21, 2016 to February 7, 2023 ("relevant time period") was estimated to be approximately one hundred and fifty-three (153) individuals who worked a total of sixteen thousand one hundred and twenty-one (16,121) workweeks with an average hourly rate of pay of approximately $14.50.

10. Plaintiff contended that Defendant required putative class members to perform work before clocking-in and after clocking-out of their scheduled shifts and during meal and rest periods. Plaintiff contended that Defendant discouraged the recordation of overtime hours and required putative class members to perform work off-the-clock. Plaintiff also contended that meal and rest periods were regularly missed, late, shortened, and/or interrupted, and that Defendant failed to properly pay premiums for all non-compliant rest periods and all non-compliant meal periods. Additionally, Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff and putative class members all wages due to them while they were employed by Defendant, within the time period permissible under California law, and that Defendant failed to pay all wages due upon termination, within the time period permissible under California law, thereby triggering waiting-time penalties under California Labor Code section 203. Plaintiff contended that, based on the violations described herein, the wage statements provided by Defendant and the payroll records kept by Defendant were inaccurate. Finally, Plaintiff contended that Defendant failed to reimburse Plaintiff and the other putative class members for necessary business expenses, e.g. for use of personal cell phones for work purpose and costs of complying with Defendant's dress code.

11. Class Counsel considered defense arguments, e.g., that the employer's practices, policies, and procedures complied with the law, that Defendant paid putative class members over the California minimum wage for all hours worked, that Defendant correctly paid overtime for all overtime hours worked, that no waiting-time penalties were due because waiting-time penalties only arise from "willful" failure to pay wages due and owing at the time of termination or

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resignation, that Plaintiff and putative class members suffered no actual injury from the alleged wage statement violations and that this alleged violation and the alleged recordkeeping violation are entirely derivative of the other causes of action, and that Defendant had a practice and procedure for reimbursing employees for necessary business-related expenses and did not require employees to undertake expenses that were not reimbursed. Class Counsel also considered the likelihood of Plaintiff's success in establishing that any of provisions of the California Labor Code, on which the civil penalties under PAGA and the UCL claim are predicated, were violated and that such violations were injurious and/or warranted imposition of civil penalties. Class Counsel also considered that trial courts have wide discretion when assessing penalties under PAGA, and that it could be determined that individual liability issues predominate (e.g., due to purported variation in shifts, locations, job duties, and other circumstances which could raise individualized questions of fact) and could pose challenges to certification, manageability, and the merits of Plaintiff's claims.

12. Class Counsel considered information obtained through investigations and from Plaintiff, as well as class data and information obtained from Defendant and other sources, and created violation, damages, and penalties valuations and models prior to reaching the Settlement. Based thereon, Plaintiff calculated the potential value of the claims. However, the potential value of each claim assumed an exposure based on the case having been certified and Plaintiff having proven all elements of the claims and entitlement to monetary recovery, despite risks associated with obtaining and maintaining class certification, demonstrating manageability, and establishing liability and any underlying California Labor Code violations and damages, and significant additional costs that would have to be incurred in order to certify the case and establish liability and damages. Plaintiff also faced the risk of the Court finding that individualized issues predominate, such that the action is not suitable for class treatment or representative adjudication. While Class Counsel disagreed with Defendant's arguments and factual contentions, Plaintiff's recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses of further litigation and certification, and risks to recovery, and applied appropriate discounts for them. Class Counsel calculated the potential and realistic values of the

claims as follows:

a. Failure to Pay Overtime and Minimum Wages

i. Plaintiff alleged that Defendant failed to pay overtime and minimum wages as a result of Defendant's purported uniform policies, practices, and procedures that required putative class members to perform work during meal periods and before clocking-in and after clocking-out. Plaintiff also contended that Plaintiff and other putative class members were required to obtain pre-approval prior to working overtime, in order to be paid for work in excess of their scheduled work hours. As a result, Plaintiff contended that Defendant failed to properly compensate Plaintiff and putative class members all wages due to them, at their applicable minimum or overtime rates for all of the hours that they worked.

ii. Based on Class Counsel's investigations, Plaintiff and putative class members reported that Plaintiff and putative class members were required to perform job duties such as preparing materials and molds, waxing the molds, cutting fabric, repairing molds, and attaching parts before and after clocking in and out for their scheduled shift. Plaintiff and putative class members were required to wait in line before punching into Defendant's timekeeping system daily. Additionally, supervisors often called Plaintiff and other putative class members to assign new tasks for the next workday after clocking out. Taking into account these facts, the unpaid wage claims centered on 30 minutes of off-the-clock work per workweek to wait in line, prepare materials and molds, wax the molds, cut fabric, repair molds, attach parts, and communicate with supervisors before and after clocking in and out for their scheduled shifts, and during meal periods.

iii. The potential value of the overtime claim was estimated to be $175,315.88 (16,121 workweeks x .5 hours of unpaid overtime wages x overtime hourly rate of $21.75, which is based on the average hourly rate of $14.50). The potential value of the minimum wage claim was estimated to be $58,438.63 (16,121 workweeks x .25 hours of unpaid minimum wages x average hourly rate of $14.50).

iv. With respect to the overtime claim, at this juncture, a discount of 80% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $35,063.18), a discount of 70% was applied to account

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for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $10,518.95), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $3,681.63). Also with respect to the minimum wage claim, at this juncture, a discount of 80% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of this claim closer to $11,687.73), a discount of 65% was applied to account of the risks associated with succeeding on the merits and establishing liability (bring the value of this claim closer to $4,090.71), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $1,431.75).

b. Failure to Provide Compliant Meal Periods and Associated Premiums:

i. Plaintiff alleged that Defendant failed to provide timely, full, and/or uninterrupted meal periods. For example, Plaintiff contended that he and other putative class members regularly suffered short, late, interrupted, and missed meal periods because they had to perform work during meal periods, as a result of understaffing, heavy workloads, and strict deadlines. Plaintiff further contended that Defendant failed to pay meal period premiums for missed, late, short, or interrupted meal periods.

ii. Based on Plaintiff's counsel's investigations, putative class members reported that the meal period claim centered on the following issues: approximately 2 meal periods per week were allegedly non-compliant because putative class members had to perform work, including and not limited to, preparing materials and molds, waxing the molds, cutting fabric, repairing molds, and attaching parts. Review and analysis of a sampling of time records reflected that approximately 98% of shifts analyzed were eligible for a meal period, of which approximately 57% of eligible shifts had a recorded violations for first meal periods, and approximately 99% of eligible shifts had a recorded violation for a second meal period. Further, approximately 42% of shifts eligible for a meal period had a purported 30-minute or 60-minute recorded meal period.

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iii. The potential value of this claim was estimated to be $467,509.00 (16,121 workweeks x 2 meal period premiums x average hourly rate of $14.50). At this juncture, a discount of 65% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $163,628.15), a discount of 75% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $40,907.04), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $12,272.11).

c. <u>Failure to Provide Compliant Rest Periods and Associated Premiums</u>:

i. Plaintiff alleged that Defendant failed to provide putative class members with timely, full, and/or uninterrupted rest periods. Plaintiff contended that Defendant's employment and operations policies, practices, and procedures required putative class members to perform job duties during their rest periods and prevented them from regularly receiving compliant rest periods in part due to understaffing, heavy workloads, and strict deadlines.

ii. Based on Plaintiff's counsel's investigations, putative class members reported that the rest period claim centered on the following issues: Defendant implemented a policy and practice of discouraging putative class members from leaving the premise during rest breaks in order to remain readily available to assist with operational needs, and rest periods were missed, shortened, interrupted, or delayed because putative class members were required to prepare materials and molds, wax the molds, cut fabric, repair molds, attach parts, and perform other tasks.

iii. The potential value of this claim was estimated to be $467,509.00 (16,121 workweeks x 2 rest period premiums x average hourly rate of $14.50). At this juncture, a discount of 90% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $46,750.90), a discount of 75% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $11,687.73), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the

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value of this claim closer to $3,506.32).

d. Failure to Timely Pay Wages During Employment and Upon Termination:

i. Plaintiff contended that, as a result of the aforementioned alleged wage-and-hour violations, Defendant also intentionally and willfully failed to timely pay Plaintiff and putative class members all wages due to them during employment. The allegation of untimely payment of wages during employment, under California Labor Code sections 204 and 210, is considered and valued as part of the PAGA claim discussed below. Plaintiff also contended that Defendant intentionally and willfully failed to pay Plaintiff and putative class members all wages due to them upon termination, within the time period permissible under California law, thereby triggering waiting-time penalties under California Labor Code section 203. Based on information and data provided by Defendant, it was estimated that approximately 81 putative class members had been terminated during the three-year statute of limitations, (i.e., from September 21, 2017). Assuming that these individuals were not timely paid all wages due to them upon termination, the potential value of waiting-time penalties was estimated to be $281,880.00 collectively (81 individuals x [30 days x hourly rate of $14.50 x 8 hours]), or approximately $3,480.00 per individual. However, this presumes that Plaintiff would prevail on the underlying California Labor Code claims and in establishing that the violations were "willful," which is necessary to show that Defendant owes waiting-time penalties. At this juncture, a discount of 80% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to $56,376.00), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $19,731.60), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $5,919.48).

e. Wage Statement Violations:

i. Plaintiff alleged that Defendant violated California Labor Code section 226(a) which states that an employer must provide an accurate and itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Plaintiff's wage statement

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claim is largely derivative of the allegations that Defendant failed to accurately account for all hours worked by, and pay all compensation due to, putative class members, e.g., the claims for unpaid wages, meal violations, and rest violations.

ii. Based on information and data provided by Defendant, it was estimated that approximately 1,170 putative class members worked during the one-year statutory limitations period (i.e., from September 17, 2019). The potential value of this claim was calculated to be $372,200.00 (93 individuals x $4,000 statutory maximum). At this juncture, a discount of 70% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $111,600.00), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $33,480.00), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $10,044.00).

f. <u>Failure to Maintain Payroll Records</u>:

i. Plaintiff's payroll records claim is derivative of the allegations that Defendant failed to accurately account for all hours worked by, and pay all compensation due to, putative class members, e.g., the claims for unpaid wages, meal violations, and rest violations. Arguably, civil penalties would only be recoverable by the Labor Commissioner, therefore, the value of this claim is considered and valued as part of the PAGA claim discussed below.

g. <u>Failure to Reimburse Necessary Business Expenses</u>:

i. Plaintiff contends that Defendant failed to reimburse Plaintiff and the other putative class members for necessary business expenses.

ii. Based on Class Counsel's investigations and analysis, putative class members reported that the expense reimbursement claim centered on the following issues: Plaintiff and putative class members used personal cell phones to perform their job duties (such as answering calls from supervisors) and costs for complying with Defendant's dress code (such as non-slip, thick-soled shoes). Specifically, putative class members reported that they were required to use personal cellphones used for work (the cost of which was estimated to be $180 per year)

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and costs of complying with Defendant's dress code (the cost of which was estimated to be $70 per year).

iii. The potential value of this claim was estimated to be $80,605.00 (16,121 workweeks x $5.00 unreimbursed business expenses). At this juncture, a discount of 90% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $8,060.50), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $2,821.18), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $846.35).

h. PAGA Penalties:

i. Plaintiff contended that Defendant's above-discussed alleged conduct, namely, failure to pay for all hours worked, provide compliant meal and rest periods, timely pay wages during employment and upon termination of employment, reimburse expenses, maintain payroll records, etc., gave rise to civil penalties recoverable under the Private Attorneys General Act, California Labor Code section 2698, *et seq*. The amount of civil penalties at issue, which the Court could determine whether or not to assess and whether or not to reduce based on the facts and circumstances of the case (to avoid an award that is unjust, arbitrary and oppressive, or confiscatory, pursuant to California Labor Code section 2699(e)(2)), were estimated to be approximately $181,350.00 (93 estimated aggrieved employees x $1,950 civil penalties). At this juncture, a discount of 85% was applied to account for the risks associated with establishing manageability and possible bifurcation of discovery and/or trial (bringing the value of this claim closer to $27,202.50), a discount of 75% was applied to account for the risks associated with succeeding on the merits and establishing violations warranting the imposition of penalties (bringing the value of this claim closer to $6,800.63), and a discount of 70% was applied to account for the risks associated with proving the extent of penalties that should be assessed and the Court's possible discretionary reduction of the amount of penalties imposed (bringing the value of this claim closer to $2,040.19).

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i. <u>Total Value</u>

i. The potential total value of this case is $2,084,607.51. After discounting for the risks associated with obtaining and maintaining class certification, the potential total value is closer to $460,368.96. After discounting for the risks associated with succeeding on the merits and establishing liability, the potential total value is closer to $130,037.84. After discounting for the risks associated with proving the extent of damages and obtaining an award thereof, the total potential value is closer to $39,741.83.

13. The foregoing discussion confirms that the amount of the Settlement is adequate in light of Plaintiff's allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to class certification, manageability, merits, and monetary recovery. The conclusion to be drawn from the foregoing analysis is that neither class certification, manageability, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide or representative basis is clear-cut, which is why the Parties elected to settle this matter. Class Counsel recognized the significant costs and expenses associated with further litigation and the present value of obtaining a settlement now as opposed to a potential monetary recovery that may be obtained in the future after further litigation. Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, and risks to recovery and applied appropriate discounts.

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14. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is in the best interest of Plaintiff, the Class, PAGA Members, and the State of California. Class Counsel further submits that the Settlement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the cases, the inherent costs and risks of further litigation, and the costs and risks associated with certification, representative PAGA claims, trial, and/or appeals.

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

Executed on this 11th day of October 2024, at Mooresville, North Carolina.

Helene Mayer

Helene Mayer

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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
San Bernardino District
247 West 3rd St
San Bernardino, CA 92415
www.sb-court.org

PORTAL MINUTE ORDER

Case Number: CIVDS2019970 **Date: 9/18/2024**

Case Title: *COMPLEX/CLASS ACTION*RAMIREZ V VICTORY

Department S17 - SBJC	**Date: 9/18/2024**	**Time: 1:30 PM**	**Motion for Preliminary Approval of Class Action Settlement**

Judicial Officer: Joseph T Ortiz
Judicial Assistant: Jessica Garcez
Court Reporter: Not Reported or Recorded
Court Attendant: Jani Urbano

Appearances
Attorney Helene Mayer appears by Zoom for Plaintiff RICARDO RAMIREZ
Attorney Kyle Kring appears by Zoom for Defendant VICTORY DESIGN, INC .

Proceedings
Tentative decisions
RICARDO RAMIREZ's Motion for Preliminary Approval is heard.
Submitted on the Court's tentative ruling without argument.

Hearings
Motion for Preliminary Approval of Class Action Settlement set for 10/18/2024 at 1:30 PM in Department S17 - SBJC

== Minute Order Complete ==

Tentative Rulings
September 18, 2024
Department S-17
Judge Joseph Ortiz

Tentative Rulings for Department S-17 are posted on the court's website (https://www.sb-court.org/divisions/civil/civil-tentative-rulings) at 3:00 p.m. or at 7:00 p.m. the court day before the hearing. If no tentative ruling is posted at 3:00 p.m., please check again after 7:00 p.m.

Unless you wish to submit on the tentative ruling, you must appear for the hearing either in person, CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If you wish to submit to the tentative, please call the Judicial Assistant at (909) 708-8715 in advance of the hearing. If all parties submit on a tentative ruling, it will become final. The tentative ruling may seek input on particular issues and direct appearance. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

ATTENTION: Since January 9, 2023, the court no longer provides an official Court Reporter to transcribe proceedings. Parties who wish to have a transcript must retain their own private reporter and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the Department if you need this form. Prior to the hearing, you can email the completed Stipulation to Department S-17 at jgarcez@sb-court.org. Parties who do not retain their own reporter have waived the right to one.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

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14. *De La Cruz v. Northwest Pipe Company*, Case No. CIVSB2211140
Motion for Final Approval of Class Action Settlement
9/18/24, 1:30 p.m., Dept. S-17

The Court would **GRANT.**

Here, Plaintiff originally filed his wage-and-hour class action complaint against Defendant on May 25, 2022, asserting causes of action for violations related to (1) overtime wages; (2) minimum wages; (3) meal periods; (4) rest breaks; (5) itemized wage statements; (6) final pay; (7) reimbursements; as well as (8) for violation of the unfair competition law. He issued his notice to the LWDA on that same date. Then, he filed a First Amended Complaint (FAC) on February 2, 2023, to add a ninth cause of action for civil penalties pursuant to the Private Attorneys General Act (PAGA).

The Parties engaged in robust discovery sufficient to value the case. In that light, the Parties engaged in a full day of mediation on July 17, 2023, with Todd Smith, an experienced neutral with expertise in wage-and-hour matters. The Parties were unable to settle on the date of the mediation, but they reached settlement later. A long form settlement was executed by March of 2024. The settlement sets the class as being defined as all current and former hourly-paid or non-exempt employees who worked for Defendant in California any time from May 25, 2018, through July 17, 2023. (Settlement, ¶¶6(b) & (f).) The PAGA period is from May 25, 2021, through July 17, 2023. (*Id.*, ¶6(z).) The LWDA was given notice of this settlement.

The parties successfully moved for Preliminary Approval of the Settlement before this Court on June 5, 2024. As preliminary matter, this Court found the total settlement amount of $651,000.00 to be fair, reasonable, and adequate given the strength of the Plaintiff's case and the risks involved in litigation. Adequate discovery and investigation had occurred, and there was no evidence of fraud or collusion.

There are 345 class members and 266 PAGA aggrieved employees. (Nava Decl., ¶¶5 & 15.) Notices were mailed on or about June 26, 2024. (Nava Decl., ¶7.) There were 22 notices returned, though 16 were re-sent after skip tracing efforts. (*Id.*, ¶8.) As of the date of this motion, only six notices are deemed undeliverable. (*Id.,* ¶8.) There were no objections, workweek disputes, or requests for exclusion. (*Id.*, ¶¶9-13.) This Motion seeks final approval on the proposed settlement.

Statement of the Law

Settlement of a class action requires court approval. (Rules of Court, rule 3.769.) The moving party must demonstrate that the settlement is "fair, adequate and reasonable." (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 126.) The court has "broad discretion in making this determination." (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) Relevant factors may include "the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintain class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) This list of factors "is not exhaustive and should be tailored to each case." (*Ibid*.) The court may "engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 overruled on other grounds.)

"Although the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245, quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801.) "The court must therefore scrutinize the proposed settlement agreement to the extent necessary to 'reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" (*Ibid*., quoting *Officers for Justice v. Civil Service Com'n* (9th Cir. 1982) 688 F.2d 615, 625.) The settlement is entitled to "a presumption of fairness . . . where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

Summary of the Proposed Class Settlement

The proposed final settlement terms are largely in line with those approved preliminarily: Defendants will pay a gross, non-reversionary settlement amount of $651,000.00, from which will be deducted (1) $217,000.00 for Class Counsel's attorneys' fees (1/3rd of the total); (2) costs of $17,517.04; (3) Plaintiff's enhancement fee of $7,500.00; (4) claims administration fees of $8,500.00; and (5) PAGA penalties of $40,000.00 (of which $30,000.00, or 75%, will go to the LWDA and $10,000.00, or 25%, will go to the aggrieved employees).

This will leave a wage-and-hour only net settlement amount of a non-reversionary $<u>360,482.96</u>. This amount would be split by the class of 354 employees in proportionate shares determined by number of work weeks within the Settlement Class Period. The average per class member would be <u>$1,018.31</u>. Eighty percent (80%) would be characterized as penalties and interest, and twenty percent (20%) as wages for tax purposes. (Settlement, ¶16.) Given the 266 PAGA aggrieved employees, the average PAGA payout is <u>$37.59.</u>

Tentative

The Court finds no evidence of fraud or collusion. Class counsel are able, experienced, and well-qualified to represent the class. The representative is also well qualified to represent. The settlement was reached through an arms-length negotiation. The Court incorporates the reasons for the preliminary approval, issued on June 5, 2024, into its ruling by this reference and would:

1. Certify the Class for settlement.
2. Approve the settlement as fair and reasonable, finding that class members were given notice, advised of their rights and to object or exclude themselves.
3. Appoint Victor De La Cruz as Class Representative and approves his service award of $7,500.00.
4. Appoint Blackstone Law, APC, as Class Counsel for settlement purposes.
5. Approve administrative expenses as stated to Apex Class Action Administration at $8,500.00.
6. Approve the attorneys' fees as stated at $217,000.00, with costs of $17,517.04 for litigation of this action. Counsels' lodestar analysis supports attorneys' fees and costs that impose a multiplier sufficient to acknowledge the risk and complexity of the case. (See, e.g., Schimmel Decl., ¶¶11-12; Genish Decl., ¶43 & Exh. 3.)
7. Direct the clerk to enter the Court's order as final judgment.
8. Reserve continuing jurisdiction for the purposes of implementing, enforcing, or administering the Settlement or enforcing the terms of the Judgment.

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15. *Ramirez v. Victory Design, Inc.*, Case No. CIVDS2019970 (Consol. w/ CIVSB2100178)
Motion for Preliminary Approval of Class Action Settlement
9/19/24, 1:30 p.m., Dept. S-17

The Court would **CONTINUE** for supplemental submissions.

As a preliminary matter, the motion seeks 35% in attorneys' fees buts sets forth no basis for the proposed upward departure. More importantly, however, the motion sets forth absolutely *no* analysis on the underlying value of the case, other than to simply posit – without support – that the proposed settlement is "a fair, adequate, and reasonable resolution of the case." (Motion, 14:7.) The supporting declaration, likewise, sets forth theories of violation but no value analysis. (See, e.g., Mayer Decl., ¶¶16-18.) The Court declines to speculate on the maximum value of Plaintiff's claims, and, therefore, cannot yet reach analysis on whether this proposed settlement is "fair, adequate and reasonable" in that light. (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 126.)

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