

AUG 19 2021

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JOSE MAYORGA
10 individually and on behalf of similarly situated employees

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JOSE MAYORGA, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

BROWN STRAUSS, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendant.

Case No. STK-CV-UOE-2020-0010906

CLASS ACTION

[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

Date: SEP 21 2021

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 29, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

19
Filed SEP 21 2021

BRANDON E. RILEY, CLERK

By _____
DEPUTY

FILED BY FAX

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court on the date and time referenced above in Department
4 10D before Hon. Barbara Kronlund, presiding. Named Plaintiff Jose Mayorga ("Plaintiff") filed this
5 putative class action on December 29, 2020. The First Amended Complaint was filed April 5, 2021.
6 The operative Complaint alleges that Defendant Brown Strauss, Inc., ("Defendant") failed to pay
7 overtime wages, failed to provide meal periods, failed to provide rest periods, failed to provide
8 accurate wage statements, failed to pay final wages, engaged in unfair competition, and failed to pay
9 accrued vacation. Plaintiff has also alleged Defendant is liable for civil penalties under the Private
10 Attorneys General Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs
11 as part of this Action. Defendant denied all of Plaintiff's claims and denied that this case was
12 appropriate for class treatment. No class has been certified.

13 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
14 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
15 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
16 ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
17 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval of
18 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
19 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
20 FOLLOWS:

21 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
22 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under the California Code of Civil Procedure and related case law:

25 All non-exempt employees who have or continue to work for Defendant in
26 California from December 28, 2016 up to either (1) the Preliminary
Approval Date, or (2) September 10, 2021, whichever is earlier

27 //

28 //

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
9 contentions that Defendant caused the violations outlined above by failing to incorporate the value of
10 nondiscretionary wages into Plaintiff's and similarly situated employees' regular rates of pay for the
11 purpose of calculating overtime, sick time, and other premium pay. The PAGA, waiting time penalty,
12 wage statement violation, and unfair competition claims also derive from these violations.
13 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
14 settlement purposes is also satisfied since the claims of the Class Representative is based on the same
15 facts and legal theories as those applicable to the class members.

16 The Court also finds that preliminarily and conditionally certifying the settlement class is
17 required to avoid each Class Member from litigating similar claims individually. This settlement will
18 achieve economies of scale for Class Members with relatively small individual claims and conserve the
19 resources of the judicial system.

20 The Court finds that Plaintiff Jose Mayorga and Plaintiff's counsel, Galen T. Shimoda
21 and Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of the settlement
22 class. The Court appoints them as class representative and class counsel, respectively.

23 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

24 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
25 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of
26 a settlement, which could ultimately be given final approval by this Court. The Court also
27 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
28 Court or opt-out of being bound by the preliminarily approved Agreement.

1 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
2 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
3 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
4 \$240,000.00 Gross Settlement Amount.

5 The Court orders that Plaintiff Jose Mayorga will receive \$5,000.00 as a Class Representative
6 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
7 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

8 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
9 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
10 \$5,000.00. Any difference between the actual cost of the Claims Administrator and the approved
11 payment will be redistributed to Qualified Claimants on a pro-rata basis.

12 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
13 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
14 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
15 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
16 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
17 *v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
18 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
19 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.* \$84,000, to be appropriate compensation
20 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
21 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
22 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
23 the course of this case, which included potential loss at summary judgment, certification, and/or trial
24 proceedings. Additionally, the Court orders that up to \$12,500.00 of the settlement proceeds will be
25 paid to Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs
26 incurred and the \$12,500.00 shall be paid to the Qualified Claimants on a pro-rata basis.

27 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000.00) PAGA Payment,
28 which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount,

1 to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to
2 the Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid
3 to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that the
4 Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-
5 compliance, furthering the purpose of the Labor Code and LWDA.

6 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
7 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
8 paid out 50/50 to Capital Pro Bono, Inc. and the Center for Workers' Rights.

9 The releases and waivers for Class Members who do not opt out of being bound by the
10 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representative are also
11 approved by the Court as set forth in the Agreement.

12 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
13 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

14 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
15 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
16 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
17 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
18 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
19 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
20 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
21 at his or her most recent address based on a National Change of Address database search from the Class
22 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
23 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
24 including those of due process.

25 The Court also finds that because there is a strong interest in providing Class Members the
26 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
27 privacy rights, the sharing of employment information, including social security numbers, is not a
28 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last

1 name, last known mailing address, social security number, hire and termination dates, total number of
2 workweeks during which the Class Member performed any actual work to the Claims Administrator
3 only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the
4 Agreement and approved by this Order. The Claims Administrator shall only use this information for
5 settlement purposes identified herein, and this information shall be kept confidential, not be shared with
6 any third-party, and used only to administer the settlement.

7 4. IMPLEMENTATION SCHEDULE

8 Accordingly, with good cause shown, the Court hereby approves and orders that the following
9 implementation schedule be adhered to:

10 Last day for Defendant to provide Claims 11 Administrator with Class Member information	Within 21 calendar days after the Preliminary Approval Date
12 Last day for Claims Administrator to complete 13 NCOA search, update Class Member mailing 14 information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant
15 Last day for Class Members to opt-out, submit 16 disputes, submit objections, and submit data 17 requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
18 Last day for Claims Administrator to provide 19 Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
20 Last day for Claims Administrator to calculate the 21 final Net Settlement Amount, the final Claim 22 Amounts for Qualified Claimants and/or 23 Aggrieved Employees, any applicable taxes 24 thereon, and report the results of these calculations Class Counsel and Defendant's Counsel	Within 7 days after the Final Approval Date
25 Last day for Defendant to fund settlement	Within 21 calendar days after Final Approval 26 Date

1 2 3 4	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	The Effective Date
5 6 7	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
8 9	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
10 11	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets a final approval hearing on the proposed date of February 8, 2022 at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: SEP 21 2021

By: 

Judge of the Superior Court

BARBARA A. KRONLUND