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Filed **FEB 08 2022**
BRANDON E. RILEY, CLERK

By *Alison [Signature]*
DEPUTY

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10 individually and on behalf of similarly situated employees

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

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

13 Plaintiff,

14 vs.

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

17 Defendant.

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

CLASS ACTION

**PROPOSED ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: February 8, 2022

Time: 9:00 a.m.

Dept.: 10D

Judge: Hon. Barbara Kronlund

Filed: December 28, 2020

FAC Filed: April 5, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court on the date and time referenced above in Department 10D
4 before Hon. Barbara Kronlund, presiding. Named Plaintiff Jose Mayorga ("Plaintiff") filed this
5 putative class action on December 28, 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. The class and PAGA settlement was
13 preliminarily approved by this Court on September 21, 2021.

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

21 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **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 September 10, 2021.

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

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

13 The Court also finds certifying the settlement class is required to avoid each Class Member from
14 litigating similar claims individually. This settlement will achieve economies of scale for Class
15 Members with relatively small individual claims and conserve the resources of the judicial system.

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

19 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

20 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
21 A. The Court finds that final approval is warranted as the Agreement falls within the range of
22 reasonableness and is fair, reasonable, and adequate for the class. The Court also acknowledges that
23 Class Members were able to object to the settlement through the administration process and at a fairness
24 hearing. No such objections were made by the class members and no class members opted out of the
25 settlement.

26 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
27 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
28

1 gives final approval to the Agreement and all terms therein as if stated here in full, including the
2 \$240,000.00 Gross Settlement Amount.

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

6 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
7 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
8 \$3,500. The difference between the actual cost of the Claims Administrator and the originally allocated
9 \$5,000 will be redistributed to Qualified Claimants on a pro-rata basis.

10 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
11 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
12 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
13 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
14 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
15 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
16 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
17 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$84,000, to be appropriate compensation
18 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
19 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
20 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
21 the course of this case, which included potential loss at summary judgment, certification, and/or trial
22 proceedings. Additionally, the Court orders that \$9,915.33 of the settlement proceeds will be paid to
23 Class Counsel for reasonable costs incurred in this case. The difference between the actual costs
24 incurred and the originally allocated \$12,500.00 shall be paid to the Qualified Claimants on a pro-rata
25 basis.

26 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000.00) PAGA Payment,
27 which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount,
28 to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to

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

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

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

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

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

24 **4. IMPLEMENTATION SCHEDULE**

25 Accordingly, with good cause shown, the Court hereby approves and orders that the following
26 implementation schedule be adhered to:
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1 2 3 4 5	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel	Within 7 days after the Final Approval Date
6 7	Last day for Defendant to fund settlement	Within 21 calendar days after Final Approval Date
8 9 10 11	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
12 13 14	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
15 16 17	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
18 19	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

20
21 IT IS FURTHER ORDERED that this final approval order is effective as a judgement with each
22 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the
23 Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
24 Agreement.

25 **IT IS SO ORDERED.**

26 **FEB 08 2022**
27 Date: _____

28 By: _____

Judge of the Superior Court
BARBARA A. KRONLUND