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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

TONY NUNEZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

GABRIEL CONTAINER, a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21STCV09787

CLASS ACTION

[Assigned to: Hon. Lawrence P. Riff, Dept. 7]

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

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of Justin
F. Marquez; and Declaration of Tony Nunez]

PRELIMINARY APPROVAL HEARING

Date: June 27, 2023

Time: 10:00 a.m.

Dept: 7

1 The Court has before it Plaintiff Tony Nunez (“Plaintiff”) Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declaration of Justin F. Marquez, the Class and Representative
4 Action Settlement Agreement (which is referred to here as the “Settlement” or “Settlement
5 Agreement”), and good cause appearing, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
7 be fair, adequate, and reasonable and therefore meets the requirements for preliminary
8 approval. The Court grants preliminary approval of the Settlement and the Settlement Class
9 based upon the terms set forth in the Settlement Agreement between Plaintiff and Defendant
10 Gabriel Container (“Defendant”), attached to the Declaration of Justin F. Marquez in Support
11 of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement as Exhibit 2.

12 2. The Settlement falls within the range of reasonableness of a settlement which
13 could ultimately be given final approval by this Court, and appears to be presumptively valid,
14 subject only to any objections that may be raised at the Final Approval Hearing and final
15 approval by this Court. The Court notes that Defendant has agreed to create a common fund
16 of \$390,000.00 to cover (a) settlement payments to class members who do not validly opt out;
17 (b) a \$25,000.00 payment to the State of California, Labor & Workforce Development Agency
18 (“LWDA”) for its share of the settlement of claims for penalties under the Private Attorneys
19 General Act (“PAGA”), with 75% of which (\$18,750.00) being paid to the LWDA and 25%
20 (\$6,250.00) being paid to the Aggrieved Employees; (c) Class Representative service payment
21 of up to \$10,000.00 for Plaintiff; (d) Class Counsel’s attorneys’ fees, not to exceed 33 1/3% of
22 the Gross Settlement Amount (\$130,000.00), and up to \$20,000.00 in costs for actual litigation
23 expenses incurred by Class Counsel; and (e) Settlement Administration Costs of up to
24 \$10,000.00.

25 3. The Court preliminarily finds that the terms of the Settlement appear to be
26 within the range of possible approval, pursuant to California Code of Civil Procedure § 382
27 and applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is
28 fair and reasonable to the class members when balanced against the probable outcome of

1 further litigation relating to class certification, liability and damages issues, and potential
2 appeals; (2) significant informal discovery, investigation, research, and litigation have been
3 conducted such that counsel for the Parties at this time are able to reasonably evaluate their
4 respective positions; (3) settlement at this time will avoid substantial costs, delay, and risks
5 that would be presented by the further prosecution of the litigation; and (4) the proposed
6 settlement has been reached as the result of intensive, serious, and non-collusive negotiations
7 between the Parties with the assistance of a well-respected class action mediator. Accordingly,
8 the Court preliminarily finds that the Settlement Agreement was entered into in good faith.

9 4. A final fairness hearing on the question of whether the proposed settlement,
10 attorneys' fees and costs to Class Counsel, payment to the LWDA for its share of the
11 settlement of claims for penalties under the PAGA, and the class representative's enhancement
12 award should be finally approved as fair, reasonable and adequate as to the members of the
13 class is hereby set in accordance with the Implementation Schedule set forth below.

14 5. The Court provisionally certifies for settlement purposes only the following
15 class (the "Settlement Class"): all individuals employed by Gabriel Container in California
16 and classified as an hourly-paid or non-exempt employee during the Class Period.

17 6. "Class Period" means the period from "September 15, 2016 through the earlier
18 of (i) the date of preliminary Approval or (ii) the date Class Members workweeks equals
19 22,653."

20 7. "PAGA Period" means the period from "September 15, 2019 through the end of
21 the Class Period."

22 8. The Court finds, for settlement purposes only, that the Settlement Class meets
23 the requirements for certification under California Code of Civil Procedure § 382 in that: (1)
24 the Settlement Class Members are so numerous that joinder is impractical; (2) there are
25 questions of law and fact that are common, or of general interest, to all Settlement Class
26 Members, which predominate over individual issues; (3) Plaintiff's claims are typical of the
27 claims of the Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and
28 adequately protect the interests of the Settlement Class Members; and (5) a class action is

superior to other available methods for the fair and efficient adjudication of the controversy.

9. The Court appoints as Class Representative, for settlement purposes only, Plaintiff Tony Nunez. The Court further preliminarily approves Plaintiff's ability to request an incentive award up to \$10,000.00.

10. The Court appoints, for settlement purposes only, Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC as Class Counsel. The Court further preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of the Total Settlement Amount (\$130,000.00), and costs not to exceed \$20,000.00.

11. The Court appoints Phoenix Settlement Administrators as the Settlement Administrator with reasonable administration costs estimated not to exceed \$10,000.00.

12. The Court approves, as to form and content the Class Notice, attached to the Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the Notice to Settlement Class Members satisfies due process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

13. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

14. Any class member who does not timely and validly request exclusion from the settlement may object to the Settlement Agreement.

15. The Court orders the following Implementation Schedule:

Defendant to provide Class List to the Settlement Administrator	July 11, 2023
Settlement Administrator to mail the Notice Packets	July 25, 2023
Response Deadline	September 25, 2023
Deadline for Administrator to Submit Report	7 days before Plaintiff's Deadline to file Motion for Final Approval, Request for

	Attorneys' Fees and Costs, and Service Award to Plaintiff
Deadline to file Motion for Final Approval, Request for Attorneys' Fees and Costs, and Service Award to Plaintiff	16 court days before hearing on Motion for Final Approval, Request for Attorneys' Fees and Costs, and Service Award to Plaintiff
Final Approval Hearing	_____, 2023 at _____ a.m./p.m., or first available date thereafter, in Department 7

16. The Court further ORDERS that, pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

IT IS SO ORDERED.

DATE: _____

Hon. Lawrence P. Riff
Los Angeles County Superior Court

Nunez v. Gabriel Container, et al.
21STCV09787

1 PROOF OF SERVICE