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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

WILLIE MARQUEZ and ANDY MIKHAEL,
on behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

ACCURATE DELIVERY SYSTEMS, INC.,
a California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. **CIVSB2125337**

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

*[Assigned for all purposes to the Hon. Jessica
Morgan, Dept. S-26]*

Date: November 30, 2023

Time: 9:00 a.m.

Dept.: S-26

Complaint Filed: August 31, 2020

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Attorneys for Plaintiff,
JULIO GARCIA

1 The unopposed motion of Plaintiffs Willie Marquez, Ahdy Mikhael, and Julio Garcia
2 (“Plaintiffs”) for an order finally approving the Stipulation of Class Action and PAGA Settlement (the
3 “Settlement”) with Defendant Accurate Delivery Systems, Inc. (“Defendant”), award of attorneys’
4 fees and costs, service awards, and payment of the expenses of the Administrator duly came on for
5 hearing on November 30, 2023 before the Honorable Jessica Morgan.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the motion,
9 the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Settlement.

11 2. This Court has jurisdiction over the subject matter of this litigation pending before the
12 Superior Court for the State of California, in and for the County of San Bernardino, and over all
13 Parties to this litigation, including the Settlement Class.

14 3. Based on a review of the papers submitted by Plaintiffs and a review of the applicable
15 law, the Court finds that the Gross Settlement Amount of Nine Hundred Thousand Dollars (\$900,000)
16 and the terms set forth in the Settlement are fair, reasonable, and adequate.

17 4. The Court further finds that the Settlement was the result of arm’s length negotiations
18 conducted after Class Counsel had adequately investigated the claims and became familiar with the
19 strengths and weaknesses of those claims. In particular, the amount of the Settlement, and the
20 assistance of an experienced mediator in the settlement process, among other factors, support the
21 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

23 5. On July 13, 2023, the Court granted preliminary approval of the Settlement. At this
24 same time, the Court approved conditional certification of the Settlement Class for settlement
25 purposes only.

26 **Notice to the Class**

27 6. In compliance with the Preliminary Approval Order, the Court-approved Notice Packet
28 was mailed by first class mail to members of the Settlement Class at their last-known addresses on or

1 about August 17, 2023. Mailing of the Notice Packet to their last-known addresses was the best
2 notice practicable under the circumstances and was reasonably calculated to communicate actual
3 notice of the litigation and the proposed settlement to the Settlement Class. The Notice Packet given
4 to the Settlement Class Members fully and accurately informed the Class Members of all material
5 elements of the proposed Settlement and of their opportunity to object to or comment thereon or to
6 seek exclusion from the Settlement; was valid, due, and sufficient notice to all Class Members; and
7 complied fully with the laws of the State of California, the United States Constitution, due process and
8 other applicable law. The Notice Packet fairly and adequately described the Settlement and provided
9 Settlement Class Members adequate instructions and a variety of means to obtain additional
10 information.

11 7. The Response Deadline for opting out or submitting written objections to the
12 Settlement was October 16, 2023. There was an adequate interval between notice and the deadline to
13 permit Settlement Class Members to choose what to do and to act on their decision. A full and fair
14 opportunity has been afforded to the Settlement Class Members to participate in this hearing, and all
15 Settlement Class Members and other persons wishing to be heard have had a full and fair opportunity
16 to be heard. Settlement Class Members also have had a full and fair opportunity to exclude
17 themselves from the proposed Settlement. Accordingly, the Court determines that all Settlement
18 Class Members who did not timely and properly submit a request for exclusion are bound by the
19 Settlement and this Final Approval Order and Judgment.

20 **Fairness of the Settlement**

21 8. The Settlement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.* 48
22 Cal.App.4th 1794, 1801 (1996).

23 a. The Settlement was reached through arm's-length bargaining between the
24 Parties during an all-day mediation before an experienced mediator of wage and hour class actions.
25 There has been no collusion between the Parties in reaching the Settlement.

26 b. Plaintiffs and their counsel's investigation and discovery have been sufficient to
27 allow the Court and counsel to act intelligently.
28

1 c. Counsel for all Parties are experienced in similar employment class action
2 litigation. Plaintiffs' counsel recommended approval of the Settlement.

3 d. No objections by Settlement Class Members were received. No requests for
4 exclusion were received.

5 e. The participation rate was exceptionally high. 104 Settlement Class Members
6 will be mailed a settlement payment, representing 100% of the overall Class.

7 9. The consideration to be given to the Settlement Class Members under the terms of the
8 Settlement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
9 asserted in this action and is fair, reasonable and adequate compensation for the release of Settlement
10 Class Members' claims given the uncertainties and significant risks of the litigation and the delays
11 which would ensue from continued prosecution of the action.

12 10. The Settlement is approved as fair, adequate, and reasonable and in the best interests of
13 the Class Members.

14 **Class Counsel's Attorneys' Fees and Costs**

15 11. An award of \$300,000 for attorneys' fees, representing one-third of the Gross
16 Settlement Amount, and \$21,491 for litigation costs and expenses, is reasonable, in light of the
17 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved
18 by Class Counsel. The requested award has been supported by Class Counsel's lodestar and billing
19 statement.

20 **Class Representative Service Awards**

21 12. The Settlement provides for Class Representative Service Awards of not more than
22 \$10,000 to each of the three Plaintiffs, subject to the Court's approval. The Court finds that a Class
23 Representative Service Awards in the amount of \$10,000 each to the Plaintiffs are reasonable in light
24 of the risks and burdens undertaken by the Plaintiffs in this litigation, for their time and effort in
25 bringing and prosecuting this matter on behalf of the Settlement Class, and for their execution of a
26 general release.

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PAGA Civil Penalties

14. The Settlement provides for PAGA civil penalties out of the Gross Settlement Amount of \$30,000. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to the PAGA Employees as the PAGA Amount. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of pay periods worked as a non-exempt employee during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees. “PAGA Employees” are all current and former non-exempt, Delivery Drivers of Defendant Accurate Delivery Systems, Inc. who worked at any time in California during the PAGA Period (August 18 2020 through June 7, 2023). Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA was provided notice of the Agreement and these settlement terms and has not indicated any objection thereto. The Court finds the PAGA civil penalties to be reasonable.

ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1 15. The Settlement Class is certified for the purposes of settlement only. The Settlement
2 Class is defined as follows:

3 All current and former Delivery Drivers of Defendant Accurate Delivery Systems, Inc.
4 who worked at any time in California during the Class Period (August 18, 2017 through
5 June 7, 2023).

6 16. All persons who meet the foregoing definition are members of the Settlement Class,
7 except for those individuals who filed a valid request for exclusion (“opt out”) from the Settlement
8 Class. There were no individuals who requested exclusion.

9 17. The Settlement is hereby finally approved as fair, reasonable, adequate, and in the best
10 interest of the Class.

11 18. Class Counsel are awarded attorneys’ fees in the amount of \$300,000 and costs in the
12 amount of \$21,491. The attorneys’ fees shall be allocated between Class Counsel as follows: 50% to
13 Blumenthal Nordrehaug Bhowmik De Blouw LLP and 50% to Haines Law Group, APC and Lidman
14 Law, APC, collectively. The costs awarded shall be allocated \$11,246.27 to Blumenthal Nordrehaug
15 Bhowmik De Blouw LLP and \$10,244.73 to Haines Law Group, APC and Lidman Law, APC. Class
16 Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiffs,
17 or members of the Settlement Class.

18 19. The payment of Class Representative Service Awards in the amount of \$10,000 each to
19 the Plaintiffs is approved.

20 20. The payment of \$5,750 to the Settlement Administrator for its fees and expenses is
21 approved.

22 21. The PAGA civil penalties of \$30,000 is approved and is to be distributed in accordance
23 with the Settlement.

24 22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall submit a
25 copy of this Final Approval Order and Judgment to the LWDA within 10 days after its entry.

26 23. The Settlement is not an admission by Defendant, nor is this Final Approval Order and
27 Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by Defendant or
28 that this Action is appropriate for class or representative treatment (other than for settlement

1 purposes). Neither this Final Approval Order and Judgment, the Settlement, nor any document
2 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may be
3 used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The
4 entering into or carrying out of the Settlement, and any negotiations or proceedings related thereto,
5 shall not in any event be construed as, or deemed to be evidence of, an admission or concession with
6 regard to the denials or defenses by Defendant. Notwithstanding these restrictions, Defendant may
7 file in the Action or in any other proceeding this Final Approval Order and Judgment, the Settlement,
8 or any other papers and records on file in the Action as evidence of the Settlement to support a
9 defense of *res judicata*, collateral estoppel, release, or other theory of claim or issue preclusion or
10 similar defense as to the claims released by the Settlement.

11 24. Notice of entry of this Final Approval Order and Judgment shall be given to all Parties
12 by Class Counsel on behalf of Plaintiffs and all Settlement Class Members. The Final Approval Order
13 and Judgment shall be posted on Settlement Administrator's website as set forth in the Notice Packet
14 to the Class. It shall not be necessary to send notice of entry of this Final Approval Order and
15 Judgment to individual Settlement Class Members.

16 25. If the Settlement does not become final and effective in accordance with the terms of
17 the Agreement, then this Final Approval Order and Judgment, and all orders entered in connection
18 herewith, shall be rendered null and void and shall be vacated, and the Parties shall revert to their
19 respective positions as of before entering into the Settlement, and expressly reserve their respective
20 rights regarding the prosecution and defense of this Action, including all available defenses and
21 affirmative defenses, and arguments that any claim in the Action could not be certified as a class
22 action and/or managed as a representative action.

23 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

24 26. Except as set forth in the Settlement and this Final Approval Order and Judgment,
25 Plaintiffs, and all members of the Settlement Class, shall take nothing in the Action.

26 27. All Parties shall bear their own attorneys' fees and costs, except as otherwise provided
27 in the Agreement and in this Final Approval Order and Judgment.
28

1 28. Effective on the date when Defendant fully funds the Gross Settlement Amount and all
2 employer payroll taxes owed, Plaintiffs, Settlement Class Members, PAGA Employees and the
3 LWDA will release claims against Defendant and all Released Parties as follows:

4 (a) All Settlement Class members and Plaintiffs will release all claims, demands,
5 rights, liabilities and causes of action that were pled or could have been pled based upon the facts
6 alleged in the operative First Amended Complaint in the Action, that arose during the Class Period
7 defined above with respect to the following claims: (a) failure to pay all overtime wages owed,
8 including without limitation resulting from unlawful/improper rounding, miscalculating the regular
9 rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to
10 pay all minimum wages owed, including without limitation resulting from unlawful/improper
11 rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to
12 provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal
13 periods; (d) failure to authorize and permit rest periods, pay premium wages for non-compliant rest
14 periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e)
15 failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon
16 separation of employment or failure to timely pay wages when due; (g) failure to issue accurate,
17 itemized wage statements; (h) failure to provide paid sick leave or to pay for sick leave; and (i) all
18 claims for unfair business practices that reasonably could have been premised on the facts, claims,
19 causes of action or legal theories described above (collectively, the “Released Class Claims”). The
20 Class Members do not release any claims other than those set forth above, including without
21 limitation claims for vested benefits, wrongful termination, violations of the Fair Employment and
22 Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims
23 based on facts occurring outside the Class Period.

24 (b) All PAGA Employees, including Plaintiffs (and also including those who opt-
25 out from the Class portion of the Settlement), will release and forever discharge the Released Parties
26 from all claims, demands, rights, liabilities and causes of action for civil penalties under California
27 Labor Code Private Attorneys General Act of 2004 which were pled in the letters to the Labor &
28 Workforce Development Agency (“LWDA”) dated May 28, 2021 and August 18, 2021 and the

operative First Amended Complaint in the Action, or which could have been pled based upon the facts alleged in the operative First Amended Complaint in the Action that arose during the PAGA Period predicated on the following alleged violations: (a) failure to pay all overtime wages owed, including without limitation resulting from unlawful/improper rounding, miscalculating the regular rate of pay, and failing to pay for non-productive time under the commission pay plan; (b) failure to pay all minimum wages owed, including without limitation resulting from unlawful/improper rounding, and failing to pay for non-productive time under the commission pay plan; (c) failure to provide meal periods, pay premium wages for non-compliant meal periods, and failure to record meal periods; (d) failure to authorize and permit rest periods, pay premium wages for non-compliant rest periods, or the failure to separately pay premiums for rest periods under the commission pay plan; (e) failure to reimburse necessary business expenses; (f) failure to timely pay all wages due upon separation of employment or failure to timely pay wages when due; (g) failure to issue accurate, itemized wage statements; and (h) failure to provide paid sick leave or to pay for sick leave (collectively, "PAGA Released Claims").

(c) Plaintiffs release, in addition to the Released Class Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties as set forth fully in the Settlement. Notwithstanding the foregoing, Plaintiffs understand that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code as fully set forth in the Settlement.

29. For any Class Member or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

30. The Court hereby enters judgment in the entire Action as of the filing date of this Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction over the

1 interpretation, implementation, and enforcement of the Settlement and all orders entered in connection
2 therewith pursuant to California Code of Civil Procedure section 664.6.

3 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

4 Dated: _____
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6 _____
7 HON. JESSICA MORGAN
8 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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