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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

GILBERTO RODRIGUEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

CARDINAL PAINT AND POWDER, INC., a
Nevada corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 20STCV14711

*[Assigned for all purposes to the Hon. Yvette
M. Palazuelos, Dept. SSC-9]*

**DECLARATION OF ELIZABETH
NGUYEN IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S ENHANCEMENT
PAYMENT, AND ATTORNEYS' FEES
AND COSTS**

Date: December 6, 2021
Time: 10:00 a.m.
Dept.: SSC-9

Complaint Filed: April 15, 2020
Trial Date: None Set

1 I, ELIZABETH NGUYEN, declare as follows:

2 1. I am a shareholder of the law firm Lidman Law, APC, and counsel for the named Plaintiff
3 Gilberto Rodriguez (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am
4 a member in good standing of the bar of the State of California and am admitted to practice in this Court.
5 I have personal knowledge of the facts stated in this declaration and could testify competently to them if
6 called upon to do so.

7 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern
8 for the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. During
9 law school, I also worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel
10 for the State Bar of California.

11 3. Since graduating from law school, my practice has focused almost exclusively on
12 employment litigation. In October 2007, I began working as an associate attorney at the international
13 law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the “largest
14 law firm in the world exclusively devoted to representing management in employment, employee benefits
15 and labor law matters.”

16 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
17 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment practice
18 group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to
19 Shareholder in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my
20 practice has been and continues to be exclusively labor and employment law, with a strong emphasis on
21 wage and hour class actions venued in both state and federal courts. During this time period and my legal
22 career in general, I also worked on a number of single and multi-plaintiff wage and hour matters as well.
23 During my employment at Littler Mendelson, I was a member of its Class Action Practice Group.

24 5. During my employment at Littler Mendelson, I played a significant role in the class
25 actions that I was staffed on, and was primarily responsible for managing the litigation both in my role
26 as a Senior Associate and as a Shareholder. In particular, I received a wide-array of wage and hour class
27 action experience performing the following types of tasks: drafting demurrers, motions to strike and/or
28 dismiss; removing actions from state court to federal court; drafting and responding to written discovery;

1 drafting and opposing discovery related motions; arguing discovery related motions; drafting motions to
2 consolidate related matters; interviewing putative class members and obtaining declarations in
3 connection with class certification; drafting oppositions to motions for class certification; conducting
4 exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing
5 at class certification and potential damages resulting from such claims; drafting mediation briefs; serving
6 as the primary contact to in-house counsel; deposing named plaintiffs and putative class members;
7 deposing retained expert witnesses; and defending the depositions of corporate witnesses. I also was
8 involved in the negotiations and settlements of many large wage and hour class actions. In short, I played
9 an integral role in all aspects of litigation from the inception of a matter through and beyond class
10 certification. I also supervised the work of several associate attorneys who were staffed on the same
11 wage and hour class actions.

12 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
13 actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler
14 Mendelson:

15 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior Court,
16 County of Los Angeles, Honorable Ann Jones, presiding.

17 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court, County
18 of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.

19 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United States
20 District Court, Central District of California, Honorable Judge Percy Anderson, presiding.

21 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United States
22 District Court, Central District of California, Honorable Judge Percy Anderson, presiding.

23 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California Superior
24 Court, County of Los Angeles, Honorable Judge Jane Johnson, presiding.¹

25 ► *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California Superior
26 Court, County of Orange, Honorable Judge Thierry Patrick Colaw, presiding.

27
28 ¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

1 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California Superior
2 Court, County of Solano, Honorable Judge Paul Berman, presiding.

3 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United States
4 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

5 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United States
6 District Court, Central District of California, Honorable Judge Margaret Morrow, presiding.

7 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States District
8 Court, Central District of California, Honorable Judge Margaret Morrow, presiding.

9 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL, California
10 Superior Court, County of San Diego, Honorable Judge Jeffrey B. Barton, presiding.

11 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior Court,
12 County of Santa Clara.

13 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
14 County of Los Angeles, Honorable Judge Terry Green, presiding.

15 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior Court,
16 County of San Francisco.

17 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM, United States
18 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

19 ▶ *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United States
20 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

21 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law firm
22 with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees with work-
23 related claims, including primarily wage and hour claims and almost exclusively on a class-action basis.
24 I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%) of my practice
25 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
26 for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout
27 California, with several of them having been removed to Federal courts. I believe that my professional
28 experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of

underpaid overtime and minimum wages, meal and rest period violations, and derivative penalty claims. Not only have I litigated dozens of wage and hour cases throughout my career involving similar claims, including the wage and hour class actions identified above, I have litigated similar claims from both plaintiff and defense perspectives. As a result, I am able to realistically assess and evaluate the facts and legal arguments that can be made in pursuit and defense of similar wage and hour claims, as well as those facts and arguments in support and in opposition to class certification. Consequently, I am able to appreciate the significant risks, uncertainties, and delay involved in wage and hour class action litigation.

8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No. BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers*

1 *Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of
2 Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case
3 No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson
4 presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
5 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al.*
6 *v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of
7 San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578,
8 California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v.*
9 *Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles,
10 Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*,
11 Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the
12 Honorable Judge Philip S. Gutierrez presiding.

13 9. As co-counsel for Plaintiff and the proposed Settlement Class, I have been intimately
14 involved in every aspect of this case from the time my firm became co-counsel through the present, and
15 I believe that the proposed Settlement is a favorable result for the Settlement Class under the
16 circumstances presented.

17 10. On April 15, 2020, Plaintiff filed a putative class action complaint against Defendant
18 Cardinal Paint and Powder, Inc. in Los Angeles County Superior Court. On July 26, 2021, pursuant to
19 the Parties' stipulation and in connection with effectuating the terms of the settlement, Plaintiff filed a
20 First Amended Class and Representative Action Complaint ("FAC") adding affiliate company Cardinal
21 Industrial Finishes, one of the legal entities that employed the Class Members in California,² as a named
22 Defendant. In the FAC, Plaintiff alleges that Defendants: (1) failed to pay all minimum wages owed; (2)
23 failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed
24 to authorize and permit all legally required rest periods; (5) failed to timely pay all wages upon separation
25 of employment; (6) failed to provide accurate, itemized wage statements; (7) engaged in unlawful
26 business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General

27 _____
28 ² Cardinal Paint and Powder, Inc. manufactures the powder coating, while Cardinal Industrial Finishes is the liquid
paint portion of the business operations.

1 Act of 2004 (“PAGA”).

2 11. As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary theories
3 of liability are related to Defendant’s alleged failure to pay for all time worked and failure to provide
4 Class Members all legally compliant duty-free meal and rest periods. Specifically, Plaintiff alleges that
5 Defendants failed to compensate its non-exempt employees for all time worked. Plaintiff alleges that
6 Defendants would keep track of Plaintiff’s time worked and would unlawfully round/shave Plaintiff’s
7 work time such that Plaintiff would not be fully paid for all time worked. This time-shaving and/or
8 rounding practice utilized by Defendants was not even-handed over time and would almost exclusively
9 round and shave in Defendants’ favor such that Plaintiff was routinely underpaid for all his time worked.
10 In addition, Defendants’ timekeeping policies and/or practices required Plaintiff and other non-exempt
11 employees to stand in a line in order to clock in. This timekeeping policy and/or practice resulted in
12 Plaintiff and other non-exempt employees routinely having to wait approximately five to six minutes
13 before being able to clock in for which they did not receive pay.

14 12. Defendants contend that they compensated non-exempt employees for all of their time
15 worked and that the time punch data would necessarily include minutes that were not compensable work
16 time because the employee would not start performing any work prior to the start of the shift and/or
17 would not perform any work after the scheduled stop time. Defendants also contend that their rounding
18 practices were lawful and any unpaid time was *de minimis* and therefore non-compensable. Defendants
19 further assert that Plaintiff would be unable to certify a rounding or off-the-clock claim given the
20 individualized inquiries that would be required, given that Defendants rounding mechanism was,
21 according to Defendants, allegedly favored the employees.

22 13. Plaintiff alleges that throughout times during his employment, he and other non-exempt
23 employees would receive non-discretionary bonuses from Defendants based on the earnings of the
24 company, as well as other forms of non-discretionary pay (hereinafter the aforementioned forms of pay
25 are collectively referred to as “Incentive Pay”). Specifically, Plaintiff alleges Defendants failed to include
26 the Incentive Pay when calculating the regular rate of pay for purposes of paying Plaintiff and the other
27 non-exempt employees’ overtime wages, thereby causing them to be underpaid all of their required
28 overtime wages.

1 14. Defendants contend that Class Members received all overtime wages to which they were
2 entitled. Defendants further counter that any bonuses paid to Class Members during the relevant time
3 period were discretionary and did not need to be included in the regular rate of pay for overtime purposes.

4 15. Plaintiff alleges that he and Class Members were not provided with all legally-required
5 off-duty meal periods beginning before the end of the fifth hour of work. Specifically, Plaintiff contends
6 that Defendants' meal period policies/practices fail to require employees to record the start and stop time
7 for meal periods. Additionally, on the occasions when Plaintiff worked in excess of 10.0 hours, he was
8 not provided with a second 30-minute meal period due to Defendants' meal period policies/practices that
9 fail to provide for a second meal period for shifts over 10.0 hours. These practices resulted in
10 systematically unlawful meal periods. Despite Defendants' failure to keep any records of Plaintiff's meal
11 periods, Plaintiff is informed and believes that Defendants unlawfully automatically deducted thirty
12 minutes from Plaintiff's work time each shift for his meal break regardless of if a meal period was taken
13 or not.

14 16. Defendants counter that they have always provided non-exempt employees with an
15 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
16 employee timekeeping records were solely the result of employee choice, rather than any policy or
17 practice of Defendants. Furthermore, Defendants counter that the time records reflect compliant meal
18 periods. Defendants point out that they are only required to "provide" the opportunity to take meal
19 periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53
20 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendants contend Plaintiff's meal period claim
21 is not suited for class certification, since individual inquiries would be required to assess which
22 employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and
23 the reasons why a particular employee took a non-compliant meal period or missed a meal period during
24 a particular shift.

25 17. Plaintiff alleges that he and other Class Members were not authorized and permitted to
26 take all required rest periods due to Defendants' rest period policies/practices which fail to authorize and
27 permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, Plaintiff
28 regularly worked shifts of over 10.0 hours, but Defendants did not authorize and permit Plaintiff to take

1 a third 10-minute rest period.

2 18. Defendants contend they have always maintained and enforced lawful rest period policies
3 and practices, and that Class Members were authorized and permitted to take all off-duty rest periods in
4 compliance with California law. Defendants argue this claim is inherently unsuited for class treatment
5 as it requires an individualized inquiry into whether each Class Member was in fact authorized and
6 permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-
7 trials.

8 19. As a result of the alleged unpaid wages and unpaid meal and rest period premium wages
9 described above, Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor
10 Code § 226.

11 20. Defendants argue that meal and rest period claims cannot support a claim for wage
12 statement penalties. Defendants further argue that their alleged wage statement violations could not be
13 shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee
14 “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e)
15 for imposition of penalties..

16 21. Plaintiff alleges that as a result of the above, Defendants failed to pay all wages owed to
17 Settlement Class Members upon their separation of employment.

18 22. Defendants assert they have strong defenses to the waiting time claim because there exist
19 good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties.

20 23. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
21 Labor Code violations.

22 24. Since Plaintiff’s PAGA claim is a derivative claim based on the underlying claims,
23 Defendants argue that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims
24 will fail. Defendants also maintain that, given their good faith defenses, this Court would exercise its
25 discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of
26 Plaintiff’s claims.

27 25. These considerations, not only bore heavily on the negotiations leading to the Settlement,
28 but also confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of

1 further litigation. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted the claims
2 at issue and conducted a detailed liability analysis of class-wide data to calculate the damages figures.
3 Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate,
4 and reasonable in view of them.

5 26. After agreeing to participate in early mediation, Defendants informally produced time
6 records and payroll data for the putative class for both Cardinal Paint and Powder, Inc. and Cardinal
7 Industrial Finishes, as well as its wage and hour policies and other relevant documents and information
8 relevant to the claims alleged in advance of mediation. Plaintiff conducted an analysis of the payroll data
9 and time records produced by Defendants. After the detailed review of the payroll and time records and
10 other documents and policies produced by Defendants, Class Counsel drew on their extensive experience
11 in similar cases to assess the strengths and weaknesses of Plaintiff's case. This discovery also allowed
12 the Parties to discuss the strengths and weaknesses of Plaintiff's contemplated claims for waiting time
13 penalties, inaccurate wage statements, and civil penalties under the PAGA as well as Plaintiff's various
14 theories of liability on his claims. This discovery further allowed the parties to assess the merits and value
15 of Plaintiff's claims and Defendants' defenses thereto, if a settlement could not be reached.

16 27. On March 25, 2021, after extensive research and analysis, including a detailed analysis of
17 Defendants' potential exposure by Plaintiff, a full-day mediation was held with Jeffrey Krivis, Esq., a
18 well-respected wage and hour class action mediator, at First Mediation. During mediation, the parties
19 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and
20 the legal basis for the claims and defenses. As part of the negotiations and settlement discussions, the
21 Parties agreed that Plaintiff would file a FAC adding causes of action against Defendants for: (1) waiting
22 time penalties; (2) inaccurate wage statements; and (3) civil penalties under the PAGA. After a full day
23 mediation, the Parties reached agreement and executed a Memorandum of Understanding ("MOU").
24 Thereafter, the Parties cooperated and signed the Stipulation of Settlement ("Settlement").

25 28. Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for
26 Preliminary Approval on June 23, 2021. On August 12, 2021, the Court issued an Order Granting
27 Preliminary Approval of the Amended Settlement. Attached hereto as **Exhibit A** is a true and correct
28 copy of the Order Granting Preliminary Approval.

1 29. The Settlement Class encompasses “all current and former hourly-paid or non-exempt
2 employees who worked for Cardinal Paint and Powder, Inc. and/or Cardinal Industrial Finishes in the
3 state of California at any time during the time period of April 15, 2016 through August 12, 2021.”

4 30. Funds remaining unclaimed will be transferred to the California State Controller's Office
5 – Unclaimed Property Fund in the name of the corresponding Settlement Class Member(s).

6 31. Moreover, in my experience in wage and hour class action matters similar to this one, fee
7 awards generally average around one-third of the gross recovery.

8 32. My law firm’s and co-counsel’s work on this case includes, but is not limited to:
9 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, reviewing
10 Defendants’ documents and policies, analyzing Settlement Class Members’ timekeeping data and payroll
11 records, preparing for and attending mediation, negotiating and revising the long-form Settlement
12 Agreement, preparing the Motions for Preliminary and Final Approval, overseeing the settlement
13 administration process, communicating with Settlement Class Members, and otherwise litigating this
14 case.

15 33. Since undertaking representation of Plaintiff, Class Counsel has borne the costs of
16 litigation for over one and a half years without receiving any compensation to date. To date, my law firm
17 and co-counsel’s firm, Haines Law Group, APC have incurred \$12,332.96 in actual costs and expect to
18 incur additional \$1,500.00 in future costs for filing the instant motion, filing the final declaration
19 regarding distribution of settlement, Case Anywhere fees for approximately four quarters following final
20 approval until case closure, service and messenger fees, postage fees, and/or court costs for future court
21 appearances, for a total of \$13,832.96 in costs. Attached hereto as **Exhibit B** is an Expense Summary
22 reflecting these costs, which include but are not limited to: filing fees, messenger fees, service fees,
23 copying costs, mediation fees, and postage.

24 34. My experience in matters similar to this one was integral in evaluating the strengths and
25 weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of wage
26 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
27 federal law, as well as the procedural law of class action litigation. This case involved legal issues
28 including questions surrounding Defendant’s obligation to “provide” meal periods and “authorize and

1 permit” rest periods, and the propriety of statutory penalties, to name just a few.

2 35. Given the considerable potential for adverse outcomes in this case, including, but not
3 limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel
4 was great. In addition to the legal and procedural challenges this lawsuit presented, there were also other
5 practical challenges. There was a real risk that my firm and co-counsel’s firm would not be compensated
6 for our work, because our firms handled this matter on a purely contingent basis. Thus, Plaintiff was not
7 responsible for paying my firm’s attorneys’ fees and my firm could only recover attorneys’ fees if
8 Plaintiff was successful. By the time I (or someone from my firm) attend the final approval hearing in
9 this matter, my firm and co-counsel firm will have litigated this case for well over one year with no
10 payment, all while bearing the risk of non-payment if Plaintiff was unsuccessful. Moreover, as discussed
11 above, Class Counsel has advanced a total of \$12,332.96 (and anticipate incurring an additional
12 \$1,500.00 in hard costs in connection with filing the motion for final approval and attending the hearing
13 on the motion for final approval and related tasks) for a total of \$13,832.96 in litigation costs on a
14 contingency basis, which also carried risk because Class Counsel would not recoup its costs in the event
15 Plaintiff did not prevail in this lawsuit.

16 36. In this case, Class Counsel have a lodestar of **\$208,288** which results in a multiplier of
17 approximately 1.22 compared to the \$255,000.00 fee request. The following is a general summary
18 showing the number of hours of work performed by each attorney and paralegal in my firm and/or co-
19 counsel’s firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	68.8	\$51,600.00
Elizabeth Nguyen (16th Year Attorney)	\$650	125.9	\$81,835.00
Paul K. Haines (15th Year Attorney)	\$650	26.7	\$17,355.00
Milan Moore (6th Year Attorney)	\$400	15.5	\$6,200.00
Romina Tamiry (2nd Year Attorney)	\$295	122.4	36,108
Paralegals	\$175	86.8	15,190
Total Lodestar			208,288

1
2 37. My proposed hourly rate of \$650, Mr. Lidman's proposed hourly rate of \$750, Mr. Haines'
3 proposed hourly rate of \$650, Ms. Moore's proposed hourly rate of \$400, and Ms. Tamiry's proposed
4 hourly rate of \$295 are reasonable in light of our respective skills, wage and hour class action litigation
5 experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover,
6 our requested hourly rates and our co-counsel's requested hourly rates are in line with the *Laffey* Matrix,
7 a true and correct copy of which is attached hereto as **Exhibit C**. Based on the *Laffey* Matrix, the hourly
8 rate for a 23rd year attorney is \$914, the hourly rate for a 16th year attorney is \$759, the hourly rate for a
9 6th year attorney is \$465, and the hourly rate for a 2nd year attorney is \$378.

10 38. The attorneys' fee award requested is consistent with those routinely awarded by
11 California superior courts. California superior courts frequently grant common fund awards of 33%. *See*,
12 *e.g.*, *Ochoa v. Haralambos Beverage Co.*, No. BC319588 (Super. Ct., Los Angeles County, Feb. 1, 2007)
13 (33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.*, No.
14 RG05210418 (Super. Ct., Alameda County, Nov. 27, 2006) (33% fee award with no mention of lodestar
15 crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, No. BC293134 (Super. Ct., Los Angeles County,
16 Nov. 20, 2006) (30.7% fee award from \$12.9 million settlement with no mention of lodestar crosscheck);
17 *Garcia v. Save Mart Supermarkets*, No. 312026 (Super. Ct., Stanislaus County, Aug. 3, 2004) (33% fee
18 award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.*, No. GIC795732
19 (Super. Ct., San Diego County, Feb. 10, 2004) (approving 33% fee award); *Big Lots Overtime Cases*,
20 JCC Proceeding No. 4283, San Bernardino County Superior Court, Feb 4, 2004) (approving a 33% fee
21 recovery); *Tokar v. GEICO*, (San Diego Superior Court, No. GIC 810166, July 9, 2004) (approving award
22 of 33-1/3%); *Davis v. The Money Store, Inc.*, (San Diego County Superior Court, No. 99AS01716,
23 December 26, 2000) (33-13% of the settlement)

24 39. Indeed, numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the
25 common fund. *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No.
26 RG05198014 (awarded 43.8%) (2015); *In re California Indirect Purchaser X Ray Film Antitrust*
27 *Litigation*, San Francisco Sup. Ct. 1998 (citing *Abzug v. Kerkorian*, Los Angeles Sup. Ct., Nov. 19, 1990,
28 Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., August 20, 1990, Case No.

5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Sup. Ct., July 16, 2008, Case No. CGC-01-409105 (53%); and *Rundberg v. Intrust Napa Dev. Co.*, Napa County Sup. Ct., January 15, 2014, Case No. 26-56886 (40%).

40. Plaintiff has provided written approval of the split of attorneys' fees in this action: 48% to Haines Law Group, APC 32% to Lidman Law, APC, and 20% to the Mitchell Law Corporation, APC. Mitchell Law Corporation, APC is the referring attorney. Further, being a private law practice my firm can only properly litigate a limited number of cases at one time. The professional demands of this case were significant, including a significant number of hours of attorney and paralegal time. This litigation precluded my firm from other employment due to the time and financial commitments required by the case. Indeed, because my firm takes on cases on a purely contingency fee, we are only compensated for our time if we successfully settle a case or prevail at trial. Accordingly, I believe the requested fees are reasonable.

41. The requested service award to Plaintiff of \$5,000.00 is also reasonable. Plaintiff took on significant risks, including the risk that he could be liable for Defendants' costs if this case was unsuccessful. Plaintiff also was integral in the prosecution of this action, by, among other things, gathering documents for use in this lawsuit, providing factual information to my firm regarding his claims, and working with Class Counsel on the to prepare for mediation and discuss the case, the merits, the defenses, and the settlement reached. Further, Plaintiff put his future employment prospects at risk by becoming a named Plaintiff in a representee action since the lawsuit is public record and may become known to prospective employers when evaluating her for employment. Additionally, Plaintiff agreed to a general release and a 1542 waiver.

42. Plaintiff submitted the proposed Settlement Agreement on the California Labor & Workforce Development Agency ("LWDA") via its website on June 23, 2021, the same day that she filed the Motion for Preliminary Approval. A true and correct copy of the proof of service is attached hereto as **Exhibit D**. On October 29, 2021, Plaintiff submitted a copy of the Order granting preliminary approval on the LWDA via its website. A true and correct copy of the proof of service is attached hereto as **Exhibit E**.

1 43. As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to
2 Settlement Class members, the final judgment entered by the Court and any changes to the Final Approval
3 hearing date or location will be posted on the Settlement Administrator's website at
4 <http://www.phoenixclassaction.com/rodriguez-v-cardinal-paint/>.

5 44. Pursuant to Labor Code § 2699(1)(2), Plaintiff is submitting a copy of the Motion for Final
6 Approval and all supporting documents via the LWDA's website on the same date that it is filing this
7 motion and will file a supplemental proof of service after the Motion for Final Approval and all supporting
8 documents are submitted to the LWDA.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct. Executed on November 9, 2021, at El Segundo, California.

11
12 
13 Elizabeth Nguyen

EXHIBIT A

EXHIBIT A

AUG 12 2021

Sherri R. Carter, Executive Officer/Clerk
By Pedro Martinez, Deputy

~~[TENTATIVE]~~ RULINGS/ORDERS

Gilberto Rodriguez v. Cardinal Paint and Powder, Inc., Case
No.: 20STCV14711

The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms are, among other things:

- A. The Gross Settlement Amount ("GSA") is \$765,000.
- B. The Net Settlement Amount ("Net") \$442,750 is the GSA minus the following:
 - Up to \$255,000 (33 1/3%) for attorney fees;
 - Up to \$30,000 for litigation costs;
 - Up to \$5,000 for a service award to the proposed class representative;
 - Up to \$9,750 for settlement administration costs;
 - \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA; and
- C. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by May 11, 2022. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Nonappearance case management review is set for May 18, 2022, 8:30 a.m., Dept. 9.

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I.
BACKGROUND

Plaintiff Gilberto Rodriguez sues his former employer, Defendants Cardinal Paint and Powder, Inc., and Cardinal Industrial Finishes (collectively, "Cardinal" or "Defendants"), for alleged wage and hour violations. Defendants manufacture and sell liquid and powder coating systems. Defendant Cardinal Paint and Powder, Inc. manufactures the powder coating, while Defendant Cardinal Industrial Finishes is the liquid paint portion of the business operations. Plaintiff seeks to represent a class of Defendants' current and former non-exempt employees.

On April 15, 2020, Plaintiff filed a class action complaint against Defendant Cardinal Paint and Powder, Inc. Pursuant to the terms of the Settlement, the Parties stipulated to allow Plaintiff to file a First Amended Complaint ("FAC") adding affiliate company Cardinal Industrial Finishes, one of the legal entities that employed the Class Members in California, as a named Defendant.

On July 26, 2021, Plaintiff filed the FAC, which alleges causes of action for: (1) failure to pay all minimum wages owed (Labor Code §§ 1194, 1194.2, 1197); (2) failure to pay all overtime wages owed (Labor Code §§ 204, 510, 558, 1194, 1198); (3) failure to provide meal periods (Labor Code §§ 226.7, 512, 558); (4) failure to authorize and permit all paid rest periods (Labor Code §§ 226.7, 516, 558); (5) failure to timely pay all wages due during employment and upon separation of employment (Labor Code §§ 201-204); (6) failure to provide accurate, itemized wage statements (Labor Code § 226, et seq.); (7) unfair competition (Bus. & Prof. Code § 17200, et seq.); and (8) civil penalties under the Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.)

On March 25, 2021, the Parties participated in a full-day mediation before Jeffrey Krivis, Esq. and reached agreement, executing a Memorandum of Understanding. The Parties subsequently finalized the Stipulation of Settlement ("Settlement Agreement"), a copy of which is attached to the Declaration of Elizabeth Nguyen ("Nguyen Decl.") as Exhibit 1.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

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II.
SETTLEMENT AGREEMENT

A. Definitions

Class: all current and former hourly-paid or non-exempt employees who worked for Cardinal Paint and Powder, Inc. and/or Cardinal Industrial Finishes in the state of California at any time during the Class Period. (§2.2)

Class Period: April 15, 2016 through the date of Preliminary Approval, or the date on which the Workweeks are equal to or do not exceed 51,750, whichever comes first. (§2.4)

Aggrieved Employees: All Class Members who worked for Cardinal any time during the PAGA Period. (§2.22)

PAGA Period: April 15, 2019 through the date of Preliminary Approval, or the date on which the Workweeks are equal to or do not exceed 51,750, whichever comes first. (§2.21)

The Parties stipulate to class certification for settlement purposes only. (§3.5)

B. Terms of Settlement Agreement

The essential terms are as follows:

- The Total Settlement Amount ("TSA") is \$765,000, non-reversionary. (§2.33)
- The Net Settlement Amount ("Net") (\$442,750) is the TSA minus the following:
 - Up to \$255,000 (33 1/3%) for attorney fees (§2.6);
 - Up to \$30,000 for litigation costs (Ibid.);
 - Up to \$5,000 for a service award to the Named Plaintiff (§2.29);
 - Up to \$9,750 for settlement administration costs (§2.32); and
 - Payment of \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA (§2.20).
- Non-Monetary Relief: Defendants shall implement written wage-and-hour policies, to the extent they have not done so yet, to comply with California law. (§4.2)
- Defendants' share of payroll taxes will be paid separate and apart from the TSA. (§2.33)

- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (Notice pg. 1)
- Response Deadline. "Response Deadline" means the date by which a Class Member may (i) request to be excluded from the Settlement, (ii) object to the Settlement, and/or (iii) dispute the number of Workweeks credited to him or her. The Response Deadline shall be forty-five (45) calendar days after the Mailed Notice Date, and shall be specifically identified and set forth in the Preliminary Approval Order and the Class Notice. (§2.28)
 - o If more than ten percent (10%) of Class Members opt out of the Settlement, CARDINAL at its sole and absolute discretion may elect to rescind and revoke the entire Settlement Agreement. (§7.3)
- Individual Settlement Payment Calculation. The Settlement Administrator shall calculate the Individual Settlement Shares based on the Class Information provided to the Settlement Administrator by CARDINAL. Payment of Individual Settlement Shares to Settlement Class Members will be made from the Net Distribution Fund on a pro-rata basis, based on Workweeks during the Class Period. Specifically, the Net Distribution Fund shall be divided by the total of all Workweeks of Settlement Class Members during the Class Period in order to establish the value of each Workweek. The Individual Settlement Share to each Settlement Class Member shall be calculated by multiplying the value of a Workweek by the number of Workweeks worked by the Settlement Class Member during the Class Period. (§4.8)
 - o PAGA Employees will receive a pro-rata share of 25% of the PAGA Payment ("Individual PAGA Payment") based on workweeks during the PAGA Period. Specifically, 25% of the PAGA Payment shall be divided by the total of all workweeks worked by PAGA Employees during the PAGA Period in order to establish the value of each workweek. The Individual PAGA Payment to be made to each PAGA Employee shall be calculated by multiplying the value of a workweek by the number of workweeks worked by the PAGA Employee during the PAGA Period. (§4.9)
 - o Tax Allocation. Each individual settlement payment will be allocated as 33% to wages, 67% to penalties and interest. (§4.11)
- Funding of Settlement. Within ten (10) calendar days of the Effective Date, CARDINAL will transfer the TSA to the Settlement Administrator provided the Settlement Administrator provides valid transmission instructions, which shall include the amount of additional employer-side payroll taxes to be paid by CARDINAL as calculated by the Settlement Administrator. (§4.1)

- Uncashed Checks. "Void Date" means the date by which any checks issued to Settlement Class Members shall become void, i.e. on the 181st day after mailing. (§2.34) If any Individual Settlement Payments are not cashed, deposited, or negotiated on or before the Void Date, then within thirty (30) calendar days of the Void Date, the Settlement Administrator shall void the uncashed checks and shall transmit such funds to the California State Controller's Office's Unclaimed Property Fund division in the name of the Settlement Class Member who did not negotiate his or her check. (§10.4)
- Phoenix Settlement Administrators will perform notice and settlement administration. (§2.31)
- The Settlement Agreement was submitted to the LWDA on June 23, 2021. (Supp. Proof of Service Re: Motion for Preliminary Approval filed 6/23/21)
- Notice of Entry of Judgment will be posted on the Settlement Administrator's website. (Notice pg. 7)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

III. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On March 25, 2021, the Parties participated in a full-day mediation before Jeffrey Krivis, Esq. and reached agreement, executing a Memorandum of Understanding. The Parties subsequently finalized the Settlement Agreement. (Nguyen Decl. ¶12.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that after agreeing to participate in early mediation, Defendants informally produced time records and payroll data for the putative class for both Cardinal Paint and Powder, Inc. and Cardinal Industrial Finishes, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged in advance of mediation. Plaintiff conducted an analysis of the payroll data and time records produced by Defendants. (Id. at ¶11.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation,

including wage and hour class actions. (Id. at ¶8; Declaration of Paul K. Haines ¶6.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the estimated exposure for each of the claims alleged:

Violation	Maximum Exposure	Realistic Exposure
Unpaid Wages (Rounding)	\$150,736	\$96,471
Unpaid Overtime Wages (Incentive Pay/Bonuses)	\$87,129	\$70,575
Meal Period Violations	\$2,712,663	\$976,559
Rest Period Violations	\$430,575	\$103,338
Wage Statement Violations	\$1,143,400	\$411,624
Waiting Time Penalties	\$600,192	\$294,094
PAGA Penalties	\$1,151,800	\$414,648
Total	\$6,276,495	\$2,367,309

(Nguyen Decl. ¶¶ 16-30.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of

decertification. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.")).)

4. Amount offered in settlement. Plaintiff calculated Defendant's maximum exposure at \$6,276,495 and realistic exposure at \$2,367,309. The \$765,000 settlement amount represents approximately 12.2% of Defendant's maximum potential damages and 32.3% of Defendant's maximum potential damages which, given the uncertain outcomes, and Defendant's financial condition, is within the "ballpark of reasonableness." The \$765,000 settlement amount, after reduced by the requested deductions, leaves approximately \$442,750 to be divided among approximately 414 putative class members. Assuming full participation, the resulting payments will average approximately \$1,069.44 per class member. [$\$442,750 / 414 = \$1,069.44$]

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed "fair, adequate, and reasonable."

C. Scope of the Release

The releases identified herein shall become effective on the date on which Defendants fully fund the Total Settlement Amount "Effective Date of the Release"). (§4.17) In exchange for

the consideration provided by CARDINAL, Settlement Class Members, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them or acting or purporting to act on their behalf, agree to forever release, discharge, and hold harmless each and all of the Released Parties for the Released Class Claims during the Class Period. (§4.14)

"Released Class Claims" means all claims actually alleged or that could have been alleged in the Action by Plaintiff, on behalf of himself and the Settlement Class Members, based on the facts alleged in the Action including but not limited to: (1) Violation of California Labor Code §§ 510, 1194 and 1198, and IWC Wage Order 4-2001, § 3 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7, 510, 512, 1194, 1197, and IWC Wage Order 4-2001, § 11 (Failure to Provide Meal Periods and Unpaid Meal Period Premiums); (3) Violation of California Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001, § 12 (Failure to Provide Rest Periods and Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1, and IWC Wage Order 4-2001, § 4 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) and IWC Wage Order 4-2001, § 7 (Non-Compliant Wage Statements); (8) Violation of California Business & Professions Code §§ 17200, et seq.; (9) failure to pay all minimum and overtime wages due under the Fair Labor Standards Act (29 U.S.C. §201, et seq.); and (10) attorneys' fees and costs of litigation associated with this Action. (§2.26)

"Action" means the operative First Amended Complaint filed in Los Angeles County Superior Court Case No. 20STCV1471. (§2.1)

In exchange for the consideration provided by CARDINAL, PAGA Employees, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them or acting or purporting to act on their behalf, agree to forever release, discharge, and hold harmless each and all of the Released Parties for the PAGA Release during the PAGA Period. (§4.15)

"PAGA Release" means PAGA Employees will release and discharge the Released Parties from civil penalties under

California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 et seq., as asserted in the operative complaint that arose during the PAGA Period premised on the facts, claims, causes of action or legal theories that were asserted in the operative complaint and disclosed in the LWDA letter including: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Failure to Provide Meal Periods and Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Failure to Provide Rest Periods and Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); and (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records). (§2.19)

The Parties agree there is no statutory or other right for any PAGA Employee to opt out or otherwise exclude himself or herself from the settlement and release of the PAGA Claims. (§7.6)

Only those Settlement Class Members who cash, deposit, or negotiate an Individual Settlement Payment check will be deemed to have opted into the Settlement and release of the Released Class Claims that arise under the Fair Labor Standards Act ("FLSA"). The Class Notice and Individual Settlement Payment checks will apprise Class Members of this. (§4.16)

"Released Parties" means (i) Cardinal Paint and Powder, Inc. and Cardinal Industrial Finishes, and their past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, and (ii) the past, present, and future shareholders, officers, directors, members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in (i). (§2.27)

Named Plaintiff will additionally provide a general release and §1542 waiver. (§§ 2.9, 4.13)

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D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 414 Class Members. (Nguyen Decl. ¶14.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Nguyen Decl. ¶14.)

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Class Counsel represents that Class Members' claims arise from Defendants' common, uniform policies and practices that applied to Class Members during the class period. Specifically, Plaintiff alleged that Defendant's common and uniform policies and practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to timely pay all wages upon separation; (6) failure to provide accurate, itemized wage statements; (7) unlawful business practices; and (8) liability for civil penalties under PAGA. (Nguyen Decl. ¶15.)

Regarding typicality, Plaintiff represents that his claims are typical of those held by the members of the proposed Class. First, Plaintiff was employed by Defendants during the Class Period as a non-exempt, hourly employee and alleges that he was subject to Defendants' wage and hour policies at issue in this case. Plaintiff alleges that Defendants utilized the same wage and hour policies and practices at both facilities. Second, Plaintiff was injured by the same challenged policies that injured the Class as a whole. For example, Plaintiff asserts that he, like the members of the Classes, was not provided all legally required minimum wages and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal or rest periods, was not provided with accurate, itemized wage statements, and was not paid all of his wages owed upon separation of employment. (Declaration of Gilberto Rodriguez ¶¶ 2-5, 11.)

Finally, as to adequacy, Plaintiff represents that he is aware of the risks of serving as Class Representative, has been actively involved in the litigation, and has no conflicts with any of the other Class Members. (Id. at ¶¶ 7-11.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. A copy of the proposed notice to class members is attached to the Settlement Agreement as Exhibit A. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the

settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing. The Notice will be sent in English and Spanish. (§6.2)

2. Method of class notice. No more than fifteen (15) calendar days after Preliminary Approval, Cardinal shall provide the Settlement Administrator with the Class Information for purposes of sending the Class Notice to Class Members. (§6.1) No more than thirty (30) calendar days after Preliminary Approval (i.e., the Mailed Notice Date), the Settlement Administrator shall send the Class Notice to Class Members in English and Spanish via first class U.S. Mail. (§6.2)

Upon receipt of the Class Information, the Settlement Administrator shall make a good-faith attempt to obtain the most-current names and postal mail addresses for those individuals, including cross-checking the names and/or postal mail addresses it received from Cardinal with other appropriate databases (e.g., the National Change of Address Database). If any Class Notice mailed to any Class Member is returned, Settlement Administrator shall make a good-faith attempt to obtain an updated mailing address within three (3) business days of receiving the returned Class Notice and perform further reasonable searches (e.g., through LexisNexis and/or utilizing a "skip trace") for more-current names and/or postal mail addresses for those individuals. All Class Members' names and postal mail addresses obtained through these sources shall be protected as confidential and not used for purposes other than the notice and administration of this Settlement. The address determined by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Members. The Settlement Administrator shall promptly re-mail the Class Notice to any Class Member whose original notice was returned because of a wrong address within three business days of obtaining an updated address and advise the Class Members of the Extended Response Deadline. (§6.6)

If any Class Notice to a Class Member is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the postal mailing to that address within three (3) business days. Class Members whose Class Notices are re-mailed shall have an additional ten (10) calendar days from the original Response Deadline to submit a response ("Extended Response Deadline"). The Settlement Administrator will advise Class Members of the Extended Response Deadline where applicable. (§6.7) The Settlement Administrator

shall continue to obtain updated mailing addresses for any undeliverable Class Notices until the Response Deadlines. (§6.8)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$9,750. (§2.32) Prior to the time of the final fairness hearing, the settlement administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$255,000 (33 1/3%) in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

There is a fee split. Class Counsel represents that Plaintiff has provided written approval of the split of attorneys' fees in this action: 48% to Haines Law Group, APC, 32% to Lidman Law, APC, and 20% to Mitchell Law Corporation, APC. Mitchell Law Corporation, APC is the referring attorney. (Nguyen Decl. ¶32.)

Class Counsel must also justify the costs sought (capped at \$30,000) by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$5,000 for the class representative, Gilberto Rodriguez (§2.29). In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit'" (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

IV.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are, among other things:

A. The Gross Settlement Amount ("GSA") is \$765,000.

B. The Net Settlement Amount ("Net") \$442,750 is the GSA minus the following:

Up to \$255,000 (33 1/3%) for attorney fees;
Up to \$30,000 for litigation costs;
Up to \$5,000 for a service award to the proposed class representative;

Up to \$9,750 for settlement administration costs;
\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by May 11, 2022. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Nonappearance case management review is set for May 18, 2022, 8:30 a.m., Dept. 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: _____

AUG 12 2021



YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

EXHIBIT B

EXHIBIT B

Expense Summary
Gilberto Rodriguez v. Cardinal Paint and Powder, Inc.

EXPENSE	AMOUNT
Mediation Costs (including Plaintiff's portion of mediator expenses)	\$8,000.00
Filing, Service, Case Anywhere, and Messenger Fees	\$3,819.90
Copying Costs	\$324.75
Postage Costs	\$42.73
Intake Expenses	\$45.19
Westlaw Expenses	\$100.39
Anticipated Costs for filing the Final Approval motion, court appearances, four quarterly Case Anywhere fees for Class Counsel through the date the final distribution declaration is filed, service fees, copying and postage	\$1,500.00
TOTAL:	\$13,832.96

EXHIBIT C

EXHIBIT C

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
[See the Matrix](#)
[Contact us](#)
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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT D

EXHIBIT D

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Dana Joudi](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Wednesday, June 23, 2021 12:23:25 PM

06/23/2021 12:22:52 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Court and Hearing Information

Court *

Court Case Number *

Hearing Date (if any)

Hearing Time

Hearing Location

Number of aggrieved employees *

Gross settlement amount *

765000

Gross penalty amount *

30000

Penalties to LWDA *

22500

Date of proposed settlement *

06/22/2021

Proposed Settlement and Other Documents

Proposed Settlement *

2021-06-22 C...executed.pdf

Other Attachment (if any)

2021-06-23 Ca...n (final).pdf

Other Attachment (if any)

[Remove](#)

2021-06-22 Ca...n (final).pdf

Other Attachment (if any)

[Remove](#)

2021-06-23 Ca...n (final).pdf

Other Attachment (if any)

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2021-06-22 Ca...n (final).pdf

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Other Attachment (if any)

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2021-06-22 Ca...n (final).pdf

Other Attachment (if any)

[Remove](#)

2021-06-22 Car...r (final).pdf

Other Attachment (if any)

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No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page

Submit

EXHIBIT E

EXHIBIT E

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Gladys Beltran](#)
Subject: Thank you for your Court Order or Judgment Submission
Date: Friday, October 29, 2021 11:29:00 AM

10/29/2021 11:28:45 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Order or Judgment

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Court Order or Judgment in PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Person Who is Filing)

Your First Name *

Scott

Your Last Name *

Lidman

Your Email Address *

gbeltran@lidmanlaw.com

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

4243224772

Your City *

El Segundo

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

90245

Court Case Name and Plaintiff Information

Court Case Name

Gilberto Rodriguez v Card

Plaintiff Name

Gilberto Rodriguez

Order or Judgment Details

Date Court order signed by Judge *

08/12/2021

Gross settlement amount *

765000

Gross penalties *

30000

Penalties to LWDA *

22500

Fee award *

Court Order.Judgment File and Other Files

Court Order or Judgment *

 2021-08-12 R...gs Order.pdf

Other Attachment

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

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☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.