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12 *Attorneys for Plaintiff, Charles Howard Clark*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ORANGE**

15 CHARLES HOWARD CLARK, an individual;

16 Plaintiff,

17 vs.

18 POWERSTONE PROPERTY MANAGEMENT,
19 INC., a California corporation; and DOES1
20 through 10, inclusive,

21 Defendants

Case No.: 30-2021-01212747-CU-OE-CXC

[Honorable Lon F. Hurwitz,
Department CX103]

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

*[Filed with Plaintiff's Notice of Motion and
Motion for Preliminary Approval,
Declaration of Kane Moon, and Declaration
Plaintiff Charles Howard Clark]*

PRELIMINARY APPROVAL HEARING

Date: March 29, 2024

Time: 1:30 PM

Dept: CX103

Complaint Filed: July 29, 2021

Trial Date: Not Set

1 The Court has before it the unopposed Motion for Preliminary Approval of Class and
2 PAGA Action Settlement (“Motion”) of Plaintiff Charles Howard Clark (“Plaintiff”). Having
3 reviewed the Notice of Motion, Motion, the Declaration of Kane Moon, the Declaration of, the
4 Declaration of Plaintiff Charles Howard Clark, and the Class Action and PAGA Settlement
5 Agreement (“Settlement”), and good cause appearing, **THE COURT HEREBY ORDERS AS**
6 **FOLLOWS:**

7 1. The Settlement, which is attached as **Exhibit 1** to the Declaration of Kane Moon
8 in Support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action
9 Settlement, appears to be fair, adequate and reasonable, and therefore, meets the requirements
10 for preliminary approval. In particular, the Settlement appears to be fair and reasonable in light
11 of the good faith, non-collusive negotiations between Plaintiff and Defendant Powerstone
12 Property Management, Inc. (together, the “Parties”), which resulted in the Settlement; the
13 significant informal discovery, investigation, and analysis conducted by the Parties, which
14 enabled them to intelligently evaluate, litigate and mediate the alleged claims; and the probable
15 outcome of further litigation relating to class certification, liability and damages issues; the
16 substantial costs, delay and risks of further litigation relating to the same; and the risk of
17 potential appeal.

18 2. The Settlement provides that Defendant will pay a Gross Settlement Amount of
19 \$270,000.00, which will be used to pay the Individual Class Payments; PAGA Settlement
20 Payment in the amount of \$20,000.00, with 75% (\$15,000.00) allocated to the LWDA PAGA
21 Payment, and 25% (\$5,000.00) allocated to the Individual PAGA Payment; the Class Counsel
22 Fees Payment, which is not to exceed one third of the Gross Settlement Amount, or \$90,000.00;
23 the Class Counsel Litigation Expenses Payment, which is not to exceed \$20,000.00; the Class
24 Representative Service Payment, which is not to exceed \$7,500.00 each; and the Administration
25 Expenses Payment, which is not to exceed \$10,000.00. These terms appear to contain the
26 requisite criteria for preliminary approval, pursuant to *California Code of Civil Procedure*
27 section 382 and other applicable law; and appear to fall within the range of reasonableness
28 which could ultimately be granted final approval.

1 3. The Class, which includes all non-exempt employees of Defendant who worked
2 in California from July 26, 2017, to July 1, 2023 (“Class Period”), is provisionally certified for
3 settlement purposes only. The Class is provisionally certified because it appears to meet the
4 following requirements for certification under *California Code of Civil Procedure* section 382:
5 (1) the Class is so numerous that joinder is impractical; (2) there are questions of law and fact
6 that are common, or of general interest, to all Settlement Class Members which predominate
7 over individual issues; (3) Plaintiff’s claims are typical of the claims of the Settlement Class
8 Members; (4) Plaintiff and Class Counsel will fairly and adequately protect the interests of the
9 Settlement Class Members; and (5) a class action is superior to other available methods for the
10 fair and efficient adjudication of the controversy. The Court notes that Class Members who do
11 not request exclusion from the Settlement may object thereto and may raise their objections at
12 the Final Fairness Hearing on the Settlement.

13 4. The Aggrieved Employees, which include all non-exempt employees of
14 Defendant who worked in California from July 23, 2020, through July 1, 2023 (“PAGA
15 Period”), are provisionally approved for settlement purposes only.

16 5. The Class Representative, Settlement Class Members, and Aggrieved Employees
17 (regardless of whether they are Settlement Class Members), will release claims in accordance
18 with the terms of the Settlement upon final approval by the Court of this Settlement and
19 Defendant’s payment of all sums due pursuant to this Settlement, and except as to such rights or
20 claims as may be created by this Settlement.

21 6. Effective on the date Defendant fully funds the entire Gross Settlement Amount and
22 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
23 Settlement Class Members, Aggrieved Employees, and Class Counsel will release the class and
24 PAGA claims against all Released Parties as follows:

- 25 a. **Released Parties.** “Released Parties” means Defendant and any parent,
26 subsidiary, affiliate, predecessor or successor entity, and all agents, employees,
27 contracting parties, joint employers, officers, directors and attorneys thereof.
28 Settlement, ¶ 1.41.

1 b. **Released Class Claims.** “Released Class Claims” All Participating Class
2 Members, on behalf of themselves and their respective former and present
3 spouses, family members, representatives, agents, attorneys, heirs,
4 administrators, successors, and assigns, release Released Parties from (i) all
5 claims that were alleged, or reasonably could have been alleged, based on the
6 Class Period facts stated in the Operative Complaint, including, e.g., any and all
7 claims arising under California Labor Code sections 201, 202, 203, 204, 218.5,
8 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the
9 applicable Industrial Welfare Commission Wage Orders based on any alleged
10 failure to pay minimum wage; failure to pay overtime compensation; failure to
11 pay paid time off wages; failure to provide meal periods; failure to authorize and
12 permit rest periods; failure to indemnify necessary business expenses; failure to
13 timely pay final wages; failure to timely pay wages during employment; failure
14 to provide accurate wage statements; failure to keep adequate records; and
15 unfair business practices arising under California Business and Professions
16 Code section 17200 et seq. Excluded from this portion of the release are claims
17 for PAGA penalties that were alleged, or reasonably could have been alleged,
18 based on the PAGA Period facts stated in the Operative Complaint and the
19 Plaintiff’s PAGA Notice. Except as set forth in the Released PAGA Claims
20 below, Participating Class Members do not release any other claims, including
21 claims for vested benefits, wrongful termination, violation of the Fair
22 Employment and Housing Act, unemployment insurance, disability, social
23 security, workers’ compensation, or claims based on facts occurring outside the
24 Class Period. *Settlement*, ¶¶ 1.39, 5.2.

25 c. **Released PAGA Claims.** “Released PAGA Claims” All Class Members who
26 are Aggrieved Employees are deemed to release, on behalf of themselves and
27 their respective former and present spouses, family members, representatives,
28 agents, attorneys, heirs, administrators, successors, and assigns, the Released

Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice, including any claim for PAGA penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; and/or failure to keep adequate records. *Settlement*, ¶¶ 1.40, 5.3.

7. For settlement purposes only, the Class Representative appointed for this matter is Plaintiff Charles Howard Clark. The Class Representative Settlement Payment, which is not to exceed \$7,500.00, is preliminarily approved.

8. For settlement purposes only, Class Counsel appointed for this matter is Moon Law Group, PC. The Class Counsel Fees Payment, which is not to exceed \$90,000.00; and Class Counsel Litigation Expenses Payment, which is not to exceed \$20,000.00, are preliminarily approved.

9. For settlement purposes only, the Administrator appointed for this matter is ILYM Group, Inc. The Administration Expenses Payment, which is not to exceed \$10,000.00, is preliminarily approved.

10. For settlement purposes only, the Notice Packet including the Opt-Out Form and Exclusion Form to be sent to Class Members, as to form and content, is adequate. Further, on a preliminary basis, the plan for distribution of the Notice Packet to Class Members satisfies Due Process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Class Notice is attached to the Settlement as Exhibit A.

11. A Final Fairness Hearing on the question of whether the Settlement terms, including the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments, should be finally approved as fair, adequate and reasonable as to the Settlement Class Members is hereby set in accordance with the following Implementation Schedule:

Defendant to provide Class Data to the Administrator	Within fifteen (15) calendar days from the date of preliminary approval by the Court
Administrator to mail the Notice Packets by First Class Mail	Within fourteen (14) calendar days after the Administrator receives the Class Data
Response Deadline	Within sixty (60) days after the Administrator initially mails the Notice Packet to Class Members and Aggrieved Employees
Deadline to file Motion for Final Approval	No later than sixteen (16) court days prior to the Final Fairness Hearing
Final Fairness Hearing	August 9, 2024, at 1:30 p.m. in Department CX103 of the Orange County Superior Court

12. If any of the dates in the above schedule fall on a weekend, or bank or court holiday, the time to act shall be extended to the next business day.

13. Pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the Settlement, are stayed.

14. To facilitate the administration of the Settlement pending final approval, the Court hereby enjoins the Plaintiff and all Settlement Class Members from filing or prosecuting any claims, suits or administrative proceedings, including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations, regarding claims released by the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the Administrator and the time for filing claims with the Administrator has lapsed.

15. The Settlement is preliminarily approved but is not an admission by the Defendant of the validity of any claims in the instant Class and PAGA action, or of any wrongdoing or violation of law by Defendant.

16. Neither the Settlement nor any related document shall be offered or received in

evidence in any civil, criminal, or administrative action or proceeding other than such proceedings as may be necessary to consummate or enforce the Agreement and Settlement.

17. The obligations set forth in the Settlement are deemed part of this Order. The Parties are to carry out the Settlement in accordance with its terms.

IT IS SO ORDERED.

DATE: _____

Honorable Lon W. Hurwitz
Judge of the Orange County Superior Court

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I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880, Los Angeles, California 90017. On **March 6, 2024**, I served the foregoing document described as:

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

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 Irvine, CA 92618
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Attorneys for Defendant PowerStone Property Management, Inc

[✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via e-mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this, **March 6, 2024** at Los Angeles, California.

Jason Khozam
Type or Print Name

Signature