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

RICHARD HARPER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HAMNER TOWING, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2127523
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT**

Complaint filed: October 4, 2021

The Motion for Final Approval of the Settlement (the “Final Approval Motion”) as set forth in the Class Action and Private Attorney General Act Settlement Agreement and Release of Claims (the “Settlement Agreement”) came for hearing in Department S26 of the above-entitled court. The Final Approval Motion was unopposed by Defendant Hamner Towing, Inc. Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having conducted an inquiry pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement is approved. Due and adequate notice having been given to the Class, and the Court having considered the Settlement Agreement, all

1 papers filed, and proceedings had herein and all oral and written comments received regarding
2 the proposed settlement, and having reviewed the record in this Litigation, and good cause
3 appearing,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

5 1. The Court, for purposes of this Judgment and Order (“Judgment”), refers to all
6 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

7 2. The Court has jurisdiction over the subject matter over this Action, the Class
8 Representative, the Class Members, and Defendant.

9 3. The Court finds that the distribution of the Class Notice, as provided for in the
10 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
11 under the circumstances to all Class Members and fully met the requirements of California law
12 and due process under the California and United States Constitution. Based on evidence and
13 other material submitted, the actual notice to the class was adequate.

14 4. The Court finds that the instant Action presented a good faith dispute of the
15 claims alleged, and the Court finds in favor of settlement approval.

16 5. The Released Class Claims on behalf of the Participating Class Members
17 included:

- 18 a. all claims stated in the Complaint and those based solely upon the facts in
19 the Complaint, including: (a) failure to pay minimum wages, (b) failure to
20 pay overtime wages, (c) failure to provide meal periods, (d) failure to
21 provide rest breaks, (e) failure to reimburse business expenses, (f) failure
22 to failure to timely pay wages each period and upon separation of
23 employment, (g) failure to provide accurate itemized wage statements, (h)
24 unfair and unlawful competition, and (i) all other claims for statutory
25 penalties based on the facts or claims alleged in the Complaint.

26 6. The PAGA Released Claims on behalf of the Aggrieved Employees included:

- 27 a. all PAGA claims that Plaintiff alleged against the Released Parties, on
28 behalf of Aggrieved Employees and State of California, based on the facts

1 stated in Plaintiff's Complaint and in Plaintiff's LWDA notice letter,
2 including all PAGA claims seeking civil penalties premised upon: (a)
3 failure to pay minimum wages, (b) failure to pay overtime wages, (c)
4 failure to provide meal periods, (d) failure to provide rest breaks, (e)
5 failure to reimburse business expenses, (f) failure to failure to timely pay
6 wages each period and upon separation of employment, (g) failure to
7 provide accurate itemized wage statements, and (h) all other claims for
8 civil penalties recoverable under the Private Attorneys General Act, Labor
9 Code §§ 2698 *et seq.* based on the facts or claims alleged in the
10 Complaint.

11 7. There were no Objections and one Request for Exclusion to the Settlement. Thus,
12 all Class Members except for the one opt-out are Participating Class Members who are entitled
13 to payment pursuant to the Settlement and this Judgment. Likewise, all Aggrieved Employees
14 are entitled to a pro rata share of PAGA Penalties.

15 8. The Court approves the Settlement, as set forth in the Settlement Agreement and
16 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Parties. The
17 Parties are directed to perform in accordance with the terms set forth in the Settlement
18 Agreement.

19 9. The Parties are to bear their own costs, except as otherwise provided in the
20 Settlement Agreement.

21 10. For purposes of effectuating this Order and Judgment, this Court has certified the
22 following class: "all current and former nonexempt employees employed by Defendant Hamner
23 Towing, Inc., in California at any time during the Class Period of October 4, 2017 through
24 March 9, 2023," as defined in the Settlement Agreement. The Court deems this definition
25 sufficient for purposes of California Rules of Court, rule 3.765(a).

26 11. With respect to the Settlement Class and for purposes of approving this
27 Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable
28 and so numerous that joinder of all members is impracticable; (b) there are questions of law or

fact common to the Class Members, and there is a well-defined community of interest among the Class Members with respect to the subject matter of the Action; (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the Class Representative has fairly and adequately protected the interests of the Class Members; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the Plaintiff in his individual and representative capacity and for the Settlement Class.

12. By this Judgment, the Class Representative shall release, relinquish, and discharge, and each of the Participating Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Class Claims, as defined herein and in the Settlement Agreement.

13. For purposes of effectuating this Order and Judgment, the release of the PAGA Released Claims, as defined in the Settlement Agreement, shall apply to all Aggrieved Employees which consists of “all current and former nonexempt employees employed by Defendant Hamner Towing, Inc., in California at any time during the PAGA Period of October 4, 2020 through March 9, 2023.”

14. Neither the Settlement Agreement nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement (i) is or may be deemed to be or may be used by the Plaintiff or Participating Class Members as an admission of, or evidence of, the validity of any of the Class Claims, or of any wrongdoing or liability of Defendant or any of the other Released Parties; or (ii) is or may be deemed to be or may be used by Plaintiff or Participating Class Members as an admission of, or evidence of, any fault or omission of Defendant or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendant or any of the other Released Parties may file the Settlement Agreement and/or the Judgment from this Action in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue

preclusion or similar defense or counterclaim.

15. The Gross Settlement Amount to be paid under the Settlement Agreement is \$290,000. From this amount, Class Counsel sought an award of attorney's fees of \$96,666.67, litigation expenses of \$11,310.33, a Service Award of \$5,000 for the Class Representative Richard Harper, \$6,500.00 to the Settlement Administrator, Phoenix Settlement Administrators, \$22,500 to the LWDA for PAGA penalties and \$7,500 to the Aggrieved Employees for PAGA Penalties. Defendant does not oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the payments set forth below from the Settlement Amount:

- A. \$96,666.67 to Class Counsel for attorneys' fees;
- B. \$11,310.33 to Class Counsel for costs/expenses;
- C. \$5,000 to Richard Harper as a Service Award;
- D. \$6,500.00 to the Settlement Administrator, Phoenix Settlement Administrators;
- E. \$22,500 to the LWDA;
- F. \$7,500 to the Aggrieved Employees on a pro rata basis;
- G. After deducting the foregoing payments from the Settlement Amounts, the remainder shall form the Net Settlement Amount payable to the Participating Class Members as set forth in the Settlement Agreement and as calculated by the Settlement Administrator.

16. Defendant is directed to fund the Gross Settlement Amount within 15 calendar days after the Effective Date. The Settlement Administrator is directed to calculate the Participating Class Members' Individual Settlement Amounts from the Net Settlement Amount, as well as the payments due to the Aggrieved Employees, and issue all payments within 10 days of receipt of the payment in accordance with the Settlement Agreement. Concurrently with mailing the settlement checks to the Participating Class Members and Aggrieved Employees, the Settlement Administrator include a Notice of Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the check, noting the following: "Please be advised that

on [date] the Superior Court of California for the County of San Bernardino entered Judgment in the case entitled *Harper v. Hamner Towing, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2127523, on behalf of all current and former nonexempt employees employed by Defendant Hamner Towing, Inc., in California at any time during the Class Period of October 4, 2017 through March 9, 2023.”

17. Participating Class Members and Aggrieved Employees shall have 180 days to negotiate the settlement check from the date of issuance by the Settlement Administrator. In the event that a person does not negotiate his/her check within this time period, the check will be canceled. The value of the unclaimed funds in the Settlement Administrator’s account as a result of a failure to timely cash a settlement check shall be issued to the State Controller’s Office in the name of the Participating Class Members and/or Aggrieved Employees.

18. The following dates shall govern for purposes of this implementing this Order/Judgment:

July 13, 2023	Final Approval Order is entered and the Effective Date occurs
July 28, 2023	Defendants, jointly and severally, are directed to fund the Gross Settlement Amount and separately pay their share of the employer’s tax, as calculated and directed by the Settlement Administrator.
August 7, 2023	Settlement Administrator to issue checks to Participating Class Members, Class Representative, Class Counsel, Aggrieved Employees and LWDA.
February 3, 2024	Deadline for Participating Class Members and Aggrieved Employees to cash settlement checks.
March 5, 2024	Deadline to file Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to Participating Class Members and Aggrieved Employees, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, and (v) the anticipated date payment will issued to the State Controller.
Date: _____, 2024 Time: _____ a.m.	OSC re: Disbursement Hearing

1 19. This document shall constitute a Judgment for purposes of California Rule of
2 Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the
3 Class Representative, the Participating Class Members, Aggrieved Employees, and Defendant
4 for the purposes of supervising the implementation, enforcement, construction, administration,
5 and interpretation of the Settlement Agreement and this Judgment.

6 IT IS SO ORDERED.

7
8 Dated: _____

Hon. David Cohn