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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

15 NOE PONCE CEJA, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 VENTURE DYNAMICS ENTERPRISES,
INC. and DOES 1 to 100,

20 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/02/2023 at 01:48:00 PM

Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

FILED
Clerk of the Superior Court

OCT 06 2023

By: C. Beutler, Deputy

Case No. 37-2022-00004908-CU-OE-CTL
Hon. Katherine Bacal
Dept. C-69

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

Date: October 6, 2023
Time: 1:30 p.m.
Dept.: C-69
Reservation No.: 2979210

Action filed: February 7, 2022

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

1 WHEREAS, this Action is pending before this Court as a putative class action lawsuit
2 brought by Noe Ponce Ceja the Named Plaintiff ("Plaintiff" or "Named Plaintiff") against
3 Defendant Venture Dynamics Enterprises, Inc. ("Defendant"); and

4 WHEREAS, Class Counsel applied to this Court for an order preliminarily approving the
5 settlement of the Action in accordance with the Stipulation of Settlement (the "Settlement
6 Agreement"), which, together with the exhibits annexed thereto, sets forth the terms and conditions
7 for a proposed Settlement and final resolution of the Action upon the terms and conditions set forth
8 therein; and the Court having read and considered the Settlement Agreement and the exhibits
9 annexed thereto;

10 NOW, THEREFORE, IT IS HEREBY ORDERED:

11 1. This Order incorporates by reference the definitions in the Settlement Agreement,
12 and all terms defined therein shall have the same meaning in this Order as set forth in the
13 Settlement Agreement. Per the Parties' Settlement Agreement, the Court hereby conditionally
14 certifies the following Settlement Class: All current and former non-exempt hourly employees
15 employed by Defendant Venture Dynamics Enterprises, Inc. and placed at NASSCO, Colannas,
16 and/or Bay City in the State of California between February 7, 2018 and May 31, 2023 (the "Class
17 Period").

18 2. Plaintiff and every member of the Settlement Class (except those who opt out
19 pursuant to the procedures detailed below) will release and discharge Defendant and its parents,
20 predecessors, successors, all affiliates, subsidiaries, officers, directors, agents, employees, and
21 stockholders (collectively, the "Released Parties"¹), as follows:

22 A. Settlement Class members who do not timely opt-out will release and discharge the
23 Released Parties from any and all wage and hour claims that were pleaded or could have
24 been pleaded under the Labor Code, or federal, state or local wage and hour laws, including
25 the FLSA, based on the facts alleged in the Second Amended Complaint, including claims
26 for failure to timely pay wages, failure to pay all overtime wages, minimum wage

27 ¹ The Parties agree that the Released Parties do not include NASSCO, Colannas, or Bay City.
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1 violations, meal period violations, rest period violations, wage statement violations, failure
2 to indemnify all necessary business expenditures, waiting time penalties, statutory
3 penalties, civil penalties under the PAGA, interest, and liquidated damages, and violation
4 of Business & Professions Code section 17200 ("Released Claims"). This release shall run
5 from December 7, 2018 until May 31, 2023.

6 B. It is understood and acknowledged that Settlement Class members who were
7 employed by Defendant at any point between January 17, 2021 and May 31, 2023 (the
8 "PAGA Aggrieved Employees") will be issued a check for their share of the PAGA
9 Amount, as defined below, regardless of whether they submit a timely Request for
10 Exclusion from the Settlement. PAGA Aggrieved Employees shall be deemed to have
11 released all claims for civil penalties under the PAGA with respect to the underlying wage
12 and hour claims pleaded or which could have been pleaded in the Second Amended
13 Complaint. This release shall run from January 17, 2021 until May 31, 2023.

14 C. By signing and cashing their settlement checks, Settlement Class members shall
15 also consent to opt-in to the FLSA collective action, and shall release and waive all claims
16 under the FLSA. The back of each settlement check shall include the following language
17 acknowledging the opt-in and release of FLSA claims: "I understand that by signing and
18 cashing this settlement check, I consent to opt-in to the Fair Labor Standards Act ("FLSA")
19 collective action in the matter titled, NOE PONCE CEJA v. VENTURE DYNAMICS
20 ENTERPRISES, INC., Superior Court of California, County of San Diego, Case No. 37-
21 2022-00004908-CU-OE-CTL, and will release and waive all claims under the FLSA as set
22 forth in the Stipulation of Settlement and Notice of Class Action Settlement."

23 The effective date of the Released Claims shall be the date on which Defendant fully funds
24 the Maximum Settlement Amount.

25 D. In light of Plaintiff's Class Representative Enhancement Payment, Plaintiff has
26 agreed to release, as an individual and in addition to the Released Claims described above,
27 all claims, whether known or unknown, under federal law or state law against the Released
28 Parties. The Parties understand and agree that Plaintiff is not, by way of this release,
releasing any workers' compensation claims nor any other claims which cannot be released

1 as a matter of law, but includes supplemental benefits under California Labor Code sections
2 132(a) and 4553. Notwithstanding the foregoing, Plaintiff understands that this release
3 includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits
4 afforded by Section 1542 of the California Civil Code, which provides:

5 **A general release does not extend to claims that the creditor or releasing party**
6 **does not know or suspect to exist in his or her favor at the time of executing**
7 **the release and that, if known by him or her, would have materially affected**
8 **his or her settlement with the debtor or released party.**

9 E. The Settlement will become final and effective only upon the occurrence of all of
10 the following events: (a) the Court enters an order granting preliminary approval of the
11 Settlement; (b) the Court enters an order granting final approval of the Settlement; (c) any
12 challenge to the Settlement, whether by objection or appeal, is resolved in favor of
13 enforcement of the Settlement, (d) the time for appealing the order of final approval has
14 expired without the filing of an appeal or all appeals have been exhausted and resolved in
15 favor of affirming final approval, and (e) if no objection or motion for intervention is filed
16 prior to Final Approval, then the date the court enters judgment. Should this Settlement
17 Agreement not be finally approved (or if approval is reversed or materially modified on
18 appellate review), this Settlement shall be null and void.

19 3. Named Plaintiff is hereby appointed and designated, for all purposes, as the
20 representative of the Class and Representative Action, and the following attorneys are hereby
21 appointed and designated as counsel for the Named Plaintiff, the Class Representatives and the
22 Class: Janelle Carney of Janelle Carney – Attorney at Law, APC and Emmanuel (“Manny”) Starr,
23 Adam Rose of Frontier Law Center (“Class Counsel”). Class Counsel are authorized to act on
24 behalf of Participating Settlement Class Members with respect to all acts or consents required by,
25 or which may be given pursuant to, the Settlement, and such other acts reasonably necessary to
26 consummate the Settlement. Any Objecting Class Member may enter an appearance through
27 counsel of such Class Member’s own choosing and at such Class Member’s own expense.

28 4. The Court finds on a preliminary basis that the Settlement appears to be fair,
reasonable and adequate, and one that would merit, ultimately, final approval by this Court. The

1 Court has reviewed the Settlement and recognizes the value thereof to the Class Members. The
2 Court finds, on a preliminary basis, that the Settlement is fair, adequate and reasonable as to all
3 Class Members when balanced against the potential outcomes of further litigation relating to
4 liability and damages issues. The Court further finds that the Settlement has been reached as the
5 result of serious and non-collusive, arms-length negotiations by Defendant and Plaintiff (the
6 “Settling Parties”).

7 5. A hearing (the “Final Approval Hearing”) shall be held before this Court, located
8 at 330 W. Broadway San Diego, CA 92101-3827, on 3/15, 2023 at 1:30 p.m., in
9 Department C-69, to determine all necessary matters concerning the Settlement, including:
10 whether the proposed settlement of the Action should be finally approved by the Court; whether a
11 Judgment, as provided in the Settlement Agreement, should be entered herein; whether the plan of
12 allocation contained in the Settlement Agreement should be approved as fair, adequate and
13 reasonable to the Class Members; and to finally approve Class Counsel’s Fees Award and Cost
14 Award, the Class Representative’s Enhancement award, payment to the Labor and Workforce
15 Development Agency and the Settlement Administration Costs.

16 6. The Court hereby approves, as to form and content, the Notice, attached as Exhibit
17 1 to the Declaration of Janelle Carney Settlement Agreement. The Court finds that distribution of
18 the Notice, substantially in the manner and form set forth in the Settlement Agreement and this
19 Order, meets the requirements of due process, is the best notice practicable under the
20 circumstances, and will constitute due and sufficient notice to all persons entitled thereto.

21 7. The Court hereby appoints Rust Consulting, Inc. as Settlement Administrator and
22 hereby directs the Settlement Administrator to simultaneously mail or cause to be mailed to Class
23 Members the Notice by first class mail at their last known address within ten (10) business days
24 of receiving a Class Information from Defendant.

25 8. Any Class Member (as defined by the Settlement Agreement) may choose to opt-
26 out of the Settlement or object to the Settlement as provided in the Notice by following the
27 instructions for requesting exclusion from the Settlement Class or objecting to the settlement.
28 Class Members will have sixty (60) days from the date of mailing of the Notice in which to
postmark objections or a notice of opting out. Prior to the initial mailing, the Settlement

1 Administrator will check all Class Member addresses against the National Change of Address
2 database and shall update any addresses before mailing. The Settlement Administrator will skip
3 trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
4 Notice was undeliverable. Settlement Class members to whom Notice Packets are re-mailed after
5 having been returned as undeliverable to the Settlement Administrator shall have an additional 14
6 calendar days after the Response Deadline to opt-out, object, or dispute their Individual Settlement
7 Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.

8 9. Any Class Member who did not opt-out may appear at the Final Approval Hearing
9 and may object or express his/her views regarding the Settlement and may present evidence and
10 file briefs or other papers that may be proper and relevant to the issues to be heard and determined
11 by the Court as provided in the Notice.

12 10. As of the date this Order is signed, all dates and deadlines associated with the
13 Action shall be stayed, other than those pertaining to the administration of the Settlement of the
14 Action.

15 11. The Court reserves the right to adjourn or continue the date of the Settlement
16 Hearing and all dates provided for in the Settlement Agreement without further notice to Class
17 Members, and retains jurisdiction to consider all further applications arising out of or connected
18 with the proposed Settlement.

19 Dated: 10/6/23


JUDGE OF THE SUPERIOR COURT
KATHERINE A. BACAL

22 APPROVED AS TO FORM AND CONTENT:

23 Dated: October 2, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

26 By: S/ Janelle Carney
27 Janelle Carney,
28 Attorneys for Plaintiff

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Date: October 2, 2023

ARMSTRONG TEASDALE LLP

By: S/ Julie O'Dell
Julie O'Dell, Attorney for Defendant