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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN BERNARDINO**

13
14 DENNIS EBERWEIN, an individual, on
15 behalf of himself and on behalf of all persons
16 similarly situated, and on behalf of the State of
17 California, as a private attorney general,

18 Plaintiff,

19 vs.

20 PSG CALIFORNIA LLC, a Limited Liability
21 Company; and DOES 1 through 50, inclusive,
22 Defendant,

23 Defendants.

CASE NO.: CIVSB2207161

[Consolidated with CIVSB2211719]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: June 20, 2023

Hearing Time: 9:00 a.m.

Judge: Hon. Joseph T. Ortiz

Dept: 17

Date Filed: April 8, 2022

Trial Date: Not set

24 This matter came before the Honorable Joseph T. Ortiz of the Superior Court of the State of
25 California, in and for the County San Bernardino, on June 20, 2023, for hearing on the unopposed
26 motion by Plaintiff Dennis Eberwein ("Plaintiff") for preliminary approval of the Settlement with
27 Defendant PSG California LLC ("Defendant"). The Court, having considered the briefs, argument
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PRELIMINARY APPROVAL ORDER

1 of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
2 Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

3 **IT IS HEREBY ORDERED:**

4 1. The Court preliminarily approves the Class Action and PAGA Settlement Agreement
5 ("Agreement") attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
6 Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This is based on the
7 Court's determination that the Settlement set forth in the Agreement is within the range of possible
8 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
9 and California Rules of Court, rule 3.769.

10 2. This Order incorporates by reference the definitions in the Agreement, and all terms
11 defined therein shall have the same meaning in this Order as set forth in the Agreement.

12 3. The Gross Settlement Amount that Defendant shall pay is One Million Four Hundred
13 Thousand Dollars (\$1,400,000). It appears to the Court on a preliminary basis that the settlement
14 amount and terms are fair, adequate, and reasonable as to all potential Class Members when
15 balanced against the probable outcome of further litigation and the significant risks relating to
16 certification, liability, and damages issues. It further appears that investigation and research have
17 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
18 positions. It further appears to the Court that the Settlement will avoid substantial additional costs
19 by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution
20 of the Action. It further appears that the Settlement has been reached as the result of serious and
21 non-collusive, arms-length negotiations.

22 4. The Court preliminarily finds that the Settlement appears to be within the range of
23 reasonableness of a settlement that could ultimately be given final approval by this Court. The
24 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
25 preliminarily finds that the monetary settlement awards made available to the Class is fair, adequate,
26 and reasonable when balanced against the probable outcome of further litigation and the significant
27 risks relating to certification, liability, and damages issues.

1 5. The Agreement provides for an attorneys' fees award not to exceed one-third of the
2 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$25,000, and
3 proposed a Class Representative Service Payment to Plaintiff in an amount not to exceed \$10,000.
4 The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service
5 award, until the Final Approval Hearing. Plaintiff will be required to present evidence supporting
6 these requests, including lodestar, prior to final approval.

7 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
8 representative treatment and certification of a class for settlement purposes only. This stipulation
9 will not be deemed admissible in this or any other proceeding should this Settlement not become
10 final. For settlement purposes only, the Court conditionally certifies the Class which consists of "all
11 individuals who are or previously were employed by Defendant in California who were classified as
12 hourly, non-exempt employees at any time during the Class Period." The "Class Period" is April 8,
13 2018 to May 10, 2023.

14 7. The Court concludes that, for settlement purposes only, the Class meets the
15 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
16 the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
17 (b) common questions of law and fact predominate, and there is a well-defined community of
18 interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the
19 claims of Plaintiff are typical of the claims of the members of the Class; (d) Plaintiff will fairly and
20 adequately protect the interests of the members of the Class; (e) a class action is superior to other
21 available methods for the efficient adjudication of this controversy; and (f) counsel for the Class is
22 qualified to act as counsel for the Class and Plaintiff is an adequate representative of the Class.

23 8. The Court provisionally appoints Plaintiff as the representative of the Class. The
24 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, and
25 Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the
26 Class.

1 9. The Agreement provides for \$30,000 PAGA Penalties out of the Gross Settlement
2 Amount, of which \$22,500 shall be allocated to the Labor & Workforce Development Agency
3 (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this Agreement
4 pursuant to the PAGA and \$7,500 to the Aggrieved Employees. “Aggrieved Employees” are all
5 individuals who are or previously were employed by Defendant in California who were classified as
6 hourly, non-exempt employees at any time during the Class Period (April 8, 2021 to May 10, 2023).
7 Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided notice of the
8 Agreement and these settlement terms. The Court finds the PAGA Penalties to be reasonable.

9 10. The Court hereby approves, as to form and content, the Class Notice attached to the
10 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
11 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right to
12 be excluded from the Class by submitting a written opt-out request, and of each member’s right and
13 opportunity to object to the Settlement. The Court further finds that the distribution of the Class
14 Notice substantially in the manner and form set forth in the Agreement and this Order meets the
15 requirements of due process, is the best notice practicable under the circumstances, and shall
16 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
17 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
18 Notice Packet is returned because of an incorrect address, the Administrator will promptly search for
19 a more current address for the Class Member and re-mail the Class Notice Packet to any new
20 address for the Class Member no later than seven (7) days after the receipt of the undelivered Class
21 Notice.

22 11. The Court hereby appoints CPT Group as the Administrator. No later than fifteen
23 (15) days after this Order, Defendant will provide the Class Data to the Administrator. The
24 Administrator will perform address updates and verifications as necessary prior to the first mailing.
25 Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) days after
26 receiving the Class Data, the Administrator will mail the Class Notice Packet to all Class Members
27 via first-class regular U.S. Mail to their last known address.

1 12. The Court hereby preliminarily approves the proposed procedure for exclusion from
2 the Settlement. Any Class Member may individually choose to opt out of and be excluded from the
3 Class as provided in the Class Notice by following the instructions for requesting exclusion from the
4 Class that are set forth in the Class Notice. All requests for exclusion must be postmarked or
5 received no later than forty-five (45) calendar days after the date of the mailing of the Class Notice
6 (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline for requests
7 for exclusion will be extended an additional fourteen (14) days. A Request for Exclusion may also
8 be faxed or emailed to the Administrator as indicated in the Class Notice. Any such person who
9 chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the
10 Class Settlement and will not be bound by the Class Settlement or have any right to object, appeal,
11 or comment thereon. Class Members who have not requested exclusion shall be bound by all
12 determinations of the Court, the Agreement, and the Judgment. A request for exclusion may only
13 opt out that particular individual, and any attempt to affect an opt out of a group, class, or subclass
14 of individuals is not permitted and will be deemed invalid.

15 13. Any Class Member who has not opted out may appear at the final approval hearing
16 and may object or express the Member’s views regarding the Settlement and may present evidence
17 and file briefs or other papers that may be proper and relevant to the issues to be heard and
18 determined by the Court as provided in the Class Notice. Class Members will have until the
19 Response Deadline to submit their written objections to the Administrator. Written objections may
20 also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class Notice
21 Packet is re-mailed, the Response Deadline for written objections will be extended an additional
22 fourteen (14) days. Alternatively, Class Members may appear at the Final Approval Hearing to
23 make an oral objection.

24 14. A final approval hearing shall be held before this Court on _____
25 _____ at _____ in Department 17 at the San Bernardino County Superior Court to
26 hear the motion for final approval and the motion for attorneys’ fees and costs, and to determine all
27 necessary matters concerning the Settlement, including: whether the proposed settlement of the
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1 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
2 and should be finally approved by the Court; whether the Final Approval Order and Judgment
3 should be entered herein; whether the plan of allocation contained in the Agreement should be
4 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'
5 fees and costs, service award, and the fees and expenses of the Administrator. All papers in support
6 of the motion for final approval and the motion for attorneys' fees, costs and service awards shall be
7 filed with the Court and served on all counsel no later than sixteen (16) court days before the
8 hearing and both motions shall be heard at this final approval hearing.

9 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
10 shall be construed as a concession or admission by Defendant in any way that the claims asserted
11 have any merit or that this Action was properly brought as a class or representative action, and shall
12 not be used as evidence of, or used against Defendant as, an admission or indication in any way,
13 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or
14 with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is
15 finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or
16 conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be
17 construed as, offered or admitted in evidence as, received as or deemed to be evidence for any
18 purpose adverse to the Defendant, including, but not limited to, evidence of a presumption,
19 concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission,
20 concession or damage.

21 16. In the event the Settlement does not become effective in accordance with the terms of
22 the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
23 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and
24 the Parties shall revert to their respective positions as of before entering into the Agreement, and
25 expressly reserve their respective rights regarding the prosecution and defense of this Action,
26 including all available defenses and affirmative defenses, and arguments that any claim in the
27 Action could not be certified as a class action and/or managed as a representative action. In such an
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1 event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred
2 to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the
3 Agreement with respect to the effect of the Agreement if it is not approved.

4 17. The Court reserves the right to adjourn or continue the date of the final approval
5 hearing and all dates provided for in the Agreement without further notice to Class Members and
6 retains jurisdiction to consider all further applications arising out of or connected with the proposed
7 Settlement.

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9 **IT IS SO ORDERED.**

10 Dated: _____

11 _____
12 HON. JOSEPH T. ORTIZ
13 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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