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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

LORI MAYO-HICKS, an individual; and MAGDELENA MOYA, an individual, Plaintiffs, v. ALLEN PROPERTY GROUP, INC., a California Corporation; and DOES 1–50, inclusive, Defendants.	Case No.: 24CV00617 **~~AMENDED~~ [PROPOSED] ORDER GRANTING CONDITIONAL CERTIFICATION OF SETTLEMENT AND PRELIMINARY APPROVAL OF SETTLEMENT; APPROVING CLASS NOTICE AND RELATED MATERIALS; APPOINTING CLASS COUNSEL; APPOINTING SETTLEMENT ADMINISTRATOR; AND SCHEDULING FINAL APPROVAL HEARING** Hearing Date: July 22, 2025 Time: 8:30 a.m. Department: 10 Judge: Hon. Timothy Schmal *Complaint filed: February 29, 2024* *Trial date: Not set*

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TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

The Motion for Preliminary Approval of Class Action Settlement came before this Court, Honorable Timothy Schmal, presiding, on July 22, 2025. The Court, having considered the papers submitted in support of the motion including, but not limited to, the CLASS & PAGA SETTLEMENT MEMORANDUM OF UNDERSTANDING (the "Settlement") (attached as Exhibit 1 to the Supplemental Declaration of Frank Zeccola, Esq., in support of the Motion for Preliminary Approval of Class Action Settlement), HEREBY FINDS, CONCLUDES, and ORDERS as follows:

The Motion is GRANTED.

(1) The settlement is within the range of reasonableness of a settlement that could ultimately be granted final approval by the Court;

(2) The Court grants conditional class certification;

(3) The Court appoints the Costanzo Law Firm as Class Counsel;

(4) The Court appoints Plaintiffs Lori Mayo-Hicks and Magdalena Moya as the Class Representatives;

(5) The Court approves the Class Notice;

(6) The scheduled matters are set as indicated below.

PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

As a "fiduciary" of the absent class members, the trial court's duty is to have before it sufficient information to determine if the settlement is fair, adequate, and reasonable. (*7- Eleven Owners for Fair Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, 1802 ("*Dunk*")].) California Rules of Court, rule 3.769 governs settlements of class actions. Any party to a settlement agreement may submit a written notice for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (Cal. Rules of Court, rule 3.769(c).)

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement and dismissal of the class action because the rights of the class members, and even named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 60.)

FAIRNESS OF THE SETTLEMENT AGREEMENT

In an effort to aid the Court in the determination of the fairness of the settlement, *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245 ("*Wershba*"), discusses factors the Court should consider when testing the reasonableness of the settlement.

A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Wershba, supra* at p. 245 [citing *Dunk, supra* at p. 1802].) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba, supra* at p. 250.)

In making this determination, the Court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 ("*Kullar*") [citing *Dunk, supra* at p. 1801].)

"The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ["[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators."].)

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TERMS OF SETTLEMENT AGREEMENT

"Class" means all hourly non-exempt employees who have or continue to work for Defendant in California at any time from February 29, 2020, to December 31, 2024. (Settlement Agreement § 7.)

"Class Period" means February 29, 2020, to December 31, 2024 (*Id.*)

As of December 31, 2024, there are 271 Class Members. Defendant has represented that there are no more than 19,402 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 21,343 (i.e., greater than 10% more than 19,402), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 19,402, multiplied by the workweek value. For example, if there were 10,000 workweeks represented to exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is $5.00 per workweek, Defendant would have to increase the Gross Settlement Amount by $20,000.00 (15,000 workweeks – 11,000 workweeks (10,000 workweeks plus the 10% buffer) = 4,000 workweeks x $5.00/workweek). (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 11.)

In the event 10% or more of the class members opt-out of the settlement, Defendant may, at their option, void the agreement. The parties agree, however, that neither party may opt-out or void the agreement if the Court reduces attorney fees or the requested Class Representative Enhancement Payments. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 10.)

The parties agree to conditional certification for the purposes of settlement. (Settlement Agreement § 2.)

The Gross Settlement Amount ("GSA") is **$475,000.00 non-reversionary.** (Settlement Agreement § 1.)

The Net Settlement Amount ("NSA") of $213,810.00 is the GSA minus:

- Up to **$190,000** (40%) for attorney's fees (Settlement Agreement § 3);
- Up to **$8,690** for attorneys' costs (*Id.*);
- Up to **$15,000.00** for an incentive award to the two class representatives (Settlement Agreement § 5); and
- Estimated **$8,750.00** for costs of claim administration. (Settlement Agreement § 3); and

APG shall also pay any applicable employer payroll taxes due on the wages portion of the Individual Settlement Payments in addition to the Gross Settlement Amount.

Funding of the GSA: APG shall fund the Gross Settlement Amount within 31 calendar days final approval.

This Settlement is not a claims-made settlement.

Calculation: Individual Settlement Payments for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the number of Qualifying Weeks Worked to yield a "weekly settlement value"; and then multiplying the weekly settlement value by each individual Participating Class Member's number of Qualifying Weeks Worked. A portion of each Participating Class Member's Individual Settlement Payment will be subject to appropriate wage withholding as described below. The net amount paid to any Class Member shall be that Class Member's Settlement Share. (Settlement Agreement § 8);

Tax Allocation: ¼ percent wages, 3/4 percent penalties and interest.

Class Members have 45 days after the date the Notice Packet is first mailed (or 60 days if remailed) by the Settlement Administrator to the Class Member to submit requests for dispute, objections, or exclusions.

Uncashed Checks: A Participating Class Member shall have 180 days from the date of the Individual Settlement Payments to cash their checks. For any checks not cashed after 180 days, the Settlement Administrator shall transfer the amount represented by the checks to the State of California Controller pursuant to the Unclaimed Property Law, Code of Civil Procedure Section 1500 et seq. with the identity of the Participating Class Member to whom the funds belong, to be held for the Participating Class Member pursuant to the California Unclaimed Property Law.

"Unclaimed Portion" means any check issued to Participating Class Members or other recipient that remains uncashed after 180 days of its issuance. Notice of Final Judgment will be provided through the website set up by the Settlement Administrator. Class Members may visit <<URL for custom website>> for notice of Final Judgment."

The claims administrator is Phoenix Settlement Administrators.

All class members who do not opt out will release certain claims, discussed in detail below.

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ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a Presumption of Fairness Exist?

1. Was the Settlement reached through arm's-length bargaining? Yes. On February 21, 2025, the Parties participated in private mediation before a retired judge, the Honorable Jamie Jacobs-May, which ultimately resulted in a settlement agreement. (Zeccola Decl., ¶ 15.)

2. Were investigation and discovery sufficient to allow counsel and the Court to act intelligently? Yes. It is represented that from February 29, 2024, to February 21, 2025, Class Counsel conducted significant formal discovery and investigation into Plaintiffs' allegations. For example, the Parties engaged in extensive written discovery and completed depositions, including the depositions of both Plaintiffs and several of Defendants' witnesses. APG provided data regarding the Class Members' pay, exact dates of employment, hours of work, settlement statements, applicable contracts, and more. Thousands of pages of documents were exchanged and analyzed by Class Counsel. (Zeccola Decl., ¶ 14.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in complex litigation, including wage and hour class action cases. (Zeccola Decl., ¶ 3-6.)

4. What percentage of class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2011) ¶ 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."].)

B. Is the settlement fair, adequate and reasonable?

1. Strength of Plaintiffs' case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar* at 130.)

Counsel has provided the following exposure analysis:

Meal Break Premiums	$1,079,721.30
Rest Break Premiums	$1,079,721.30
Waiting Time Penalties	$908,208.00
Wage Statement Penalties	$1,084,000.00

Recordkeeping Penalties	$135,500
Total	$4,287,150.60

2. Risk, expense, complexity and likely duration of further litigation. Further litigation carries the possibility of non-certification and unfavorable rulings on the merits of the above legal issues.the possibility of non-certification and unfavorable rulings on the merits of the above legal issues.

3. Risk of maintaining class action status through trial. It would have been Plaintiffs' burden to maintain the class action status through trial.

4. Amount offered in settlement. Based on the calculations above, the Settlement amount of $475,000.00 therefore represents approximately 15% of the maximum recovery in this matter. This percentage is within the "ballpark of reasonableness."

5. Extent of discovery completed and the stage of the proceedings. As stated above, it appears that Plaintiffs have completed sufficient discovery in order to make an informed decision.

6. Experience and views of counsel. As indicated above, Class Counsel is experienced in class actions, including wage and hour class action cases. Class Counsel is of the opinion that the settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances.

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

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 or opt-out. This factor becomes relevant during the fairness hearing.

SCOPE OF RELEASE

Class Members, including Plaintiffs, will release all claims contained in the Complaint on a class or PAGA basis, specifically: 1. Failure to Compensate For All Hours Worked, 2. Failure to Pay All Minimum Wages, 3. Failure to Pay All Overtime Wages, 4. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums, 5. Failure to Provide Meal Periods And Pay Missed Meal Period Premiums, 6. Failure to Maintain Accurate Employment Records, 7. Failure to Pay Wages Timely During Employment, 8. Failure to Pay All Wages Earned an Unpaid at Separation, 9. Failure to Furnish Accurate Itemized Wage Statements, 10. Unlawful Deductions and Failure to Reimburse

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Business Expenses, 11. Private Attorney General Act, 12. Unfair Business Practices, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint (County of Santa Cruz Case No. 24CV00617), through the Class Period. Aggrieved Employees will release all Private Attorneys General Act claims for civil penalties contained in Plaintiffs' letter to the LWDA and/or operative Complaint, through the PAGA Claim Period. The Released Parties shall include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers. (*See*, Zeccola Decl., Ex. "1" [Settlement Agreement] § 9.)

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CONDITIONAL CLASS CERTIFICATION

A. Standards

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.) Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) 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, supra* at p. 240.)

B. Analysis

1. Numerosity. This action involves a class of approximately 271 members.

2. Ascertainability. This class definition "is precise, objective and presently ascertainable." (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are identifiable from Defendant's records.

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

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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.)

Here, Plaintiff contends that the common questions at issue in this case include, inter alia:

(i) whether or not APG unlawfully failed to pay Class Members for all hours worked;

(ii) whether or not APG failed to provide complete and accurate wage statements;

(iv) whether or not APG provided lawfully compliant meal and rest periods.

(v) whether or not APG paid final wages on time; and whether or not APG paid wages owed each pay period. Moreover, Plaintiffs contend that the laws that are implicated do not vary from Class Member to Class Member.

Further, counsel contends that Plaintiffs' claims are typical of the class there are no policies, procedures, or practices complained of that apply exclusively to Plaintiffs. Similarly, Plaintiffs contend that there are no policies, procedures or practices complained of that apply to some Class Members and not others.

Finally, counsel contends that Plaintiffs have protected the interests of the class and is represented by adequate counsel.

4. Adequacy of class counsel. As indicated above, Class Counsel is experienced in class actions.

5. Superiority. Given the size of the potential individual recovery, it would be impracticable to bring each Class Member's claim as an individual claim. Because the elements of class certification have been met, the class may be conditionally certified at this time.

NOTICE TO CLASS

A. Standard

California Rules of Court, rule 3.769(e) provides: "If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing." Additionally, rule 3.769(f) states: "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement."

B. Form of Notice

The proposed notice to class members is attached as Exhibits A and B to the Settlement Agreement. The information provided in the proposed notice includes a summary of the litigation, the nature and terms of the settlement, the procedures for participating in, opting out of, or objecting to the settlement, and the time, date, and location of the final approval hearing.

The Court finds the notice acceptable.

C. Method of Notice

Notice will be by Direct Mail. APG will provide a Class List to the Settlement Administrator within 15 calendar days after entry and service of an Order Granting Preliminary Approval regarding this Settlement. Using best efforts to mail it as soon as possible, and in no event later than 15 calendar days after the Settlement Administrator receives the Class List, the Settlement Administrator will mail to all Class Members, via first-class United States Mail, the Notice. The Notice Packet shall be sent in both English and Spanish language. The Settlement Administrator will use the mailing address provided by Orange Avenue, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

D. Cost of Notice

The settlement administration costs are estimated at **$8,750.00.** This amount appears reasonable. However, prior to the time of the final fairness hearing, the Claims 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.

ATTORNEY FEES AND COSTS

California Rules of Court, 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."

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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.) In common fund cases, the Court may utilize the percentage method, cross-checked by the lodestar. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, "the Court has 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 **$190,000** (40%) in attorneys' fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.

Counsel should also be prepared to justify any costs sought (capped at **$8,690.00**) by detailing how such costs were incurred.

PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The following schedule is proposed by the Court:

Preliminary Approval Hearing – July 22, 2025

Deadline for Serving Notices to Class Members – (within 30 calendar days of preliminary approval date)

Deadline for Objecting or Opting Out – (45 days from the date the Notice Packets are mailed to class members)

Deadline for Class Counsel to File Motion for Final Approval of Settlement and Motion for Attorney Fees (and respond to any objections) – ______________________________, 2025.

(16 court days prior to hearing)

Final Fairness Hearing and Final Approval – ________________________________, 2025.

IT IS SO ORDERED.

Dated: ___________________

____
Honorable Timothy Schmal
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE BY ELECTRONIC MAIL

STATE OF CALIFORNIA, COUNTY OF SANTA CRUZ

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 111 W. St. John Street, Suite 700, San Jose, CA 95113. On July 24, 2025, I served the within:

1. AMENDED PROPOSED ORDER

on the parties in said action, by the following means:

☒ (BY EMAIL) By transmitting a true copy thereof by electronic mail from zara.ashtiani@costanzo-law.com to the interested parties to said action at the e-mail addresses shown below.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on July 24, 2025, in San Jose, California.

/s/ Zara Ashtiani
Zara Ashtiani

NAME(S) AND ADDRESS(ES) OR FAX NUMBER(S) OF EACH PARTY SERVED:

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