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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JESSICA CENDEJAS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PERFORMANCE MACHINE, LLC, a
Delaware limited liability company; and DOES
1 through 100, inclusive;

Defendants.

Case No.: 22STCV33442
[Consolidated With Case No. 23STCV06759]

Assigned for All Purposes to:
Honorable Lawrence P. Riff
Department 7

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: July 26, 2024
Hearing Time: 11:00 a.m.
Hearing Place: Department 7

Complaint Filed: October 13, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Jessica Cendejas' ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Class Action and PAGA Settlement Agreement ("Settlement
4 Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS:**

5 Plaintiff and Defendant Performance Machine, LLC ("Defendant") entered the
6 Settlement Agreement on or about November 29, 2023 to settle this lawsuit.

7 The Court entered an order dated March 19, 2024 preliminarily approving the settlement
8 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
9 section 382 and California Rule of Court 3.769, ordering notice to be sent to the Class Members,
10 providing the Class Members with an opportunity to object to the Settlement or exclude
11 themselves from the Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on July 26, 2024 to determine whether to give
13 final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
15 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
16 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
17 in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
25 exempt employees of Defendant within the State of California at any time during the period from
26 October 13, 2018, through March 19, 2024 ("Class," "Class Members," and "Class Period").
27 There are one hundred forty-five (145) Class Members who did not submit valid and timely
28 Requests for Exclusion from the Settlement ("Participating Class Members").

1 4. Adequacy of Representation. Class Counsel fully and adequately represented the
2 Class for the purposes of entering and implementing the Settlement and satisfied the
3 requirements of Code of Civil Procedure section 382.

4 5. Class Notice. The Court finds the Court Approved Notice of Class Action
5 Settlement and Hearing Date for Final Court Approval (“Class Notice”) and its distribution to the
6 Class Members were implemented pursuant to the Settlement and this Court’s Preliminary
7 Approval Order. The Court also finds the Class Notice:

- 8 a. constitutes notice reasonably calculated to apprise the Class Members of: (i)
9 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
10 Agreement and their rights; (iii) their right to object to any aspect of the
11 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
12 Agreement; (v) their right to receive settlement payments; (vi) their right to
13 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
14 judgment in this lawsuit on all the Participating Class Members;
15 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
16 section 382, California Rule of Court 3.769, and due process;
17 c. constitutes the best practicable notice to the Class Members under the
18 circumstances of this lawsuit; and
19 d. constitutes notice reasonable, adequate, and sufficient to the Class Members.

20 6. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
21 any action to enforce the terms and provisions of the Settlement Agreement.

22 7. Final Settlement Approval. The terms and provisions of the Settlement
23 Agreement have been entered into in good faith and are the product of arm’s-length negotiations
24 by experienced counsel who have carried out a meaningful investigation of the claims. The
25 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
26 reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to
27 implement the Settlement Agreement according to its terms and provisions.

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1 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
3 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
4 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
5 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
6 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
7 that were or could have been raised in this lawsuit and are encompassed by the Released Class
8 Claims and Released Private Attorneys General Act of 2004 (“PAGA”) Claims.

9 9. Release by Participating Class Members. Effective on the date when Defendant
10 fully funds the Gross Settlement Amount, all Participating Class Members, on behalf of
11 themselves and their former and present representatives, agents, attorneys, heirs, administrators,
12 successors, and assigns, release the Released Parties from the Released Class Claims.

13 a. Release by Aggrieved Employee. Effective on the date when Defendant fully
14 funds the Gross Settlement Amount, all Participating and Non-Participating Class
15 Members, who are Aggrieved Employees, are deemed to release, on behalf of
16 themselves and their former and present representatives, agents, attorneys, heirs,
17 administrators, successors, and assigns, the Released Parties from the Released
18 PAGA Claims.

19 b. Plaintiff’s Release. Effective on the date when Defendant fully funds the Gross
20 Settlement Amount, Plaintiff and her former and present spouses, representatives,
21 agents, attorneys, heirs, administrators, successors, and assigns generally release
22 and discharge Released Parties from the Plaintiff’s Released Claims. Plaintiff also
23 knowingly and voluntarily waives any and all rights or benefits she may have
24 under the terms of Civil Code section 1542.

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c. Released Parties. The Released Parties include Defendant and its past and present parents, subsidiaries, affiliates, predecessors, successors, and assigns, and all their past and present stockholders, investors, attorneys, members, owners, officers, directors, managers, employees, agents, trustees, independent contractors, and representatives.

10. Class Representative Service Payment. The Court finds the Class Representative Service Payment of \$10,000, to be paid by Defendant to Plaintiff out of the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Service Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

a. The rationale for making enhancement payments is class representatives should be compensated for the expense and risk they incurred in conferring a benefit on the Class. Criteria courts consider include: (i) risk to the class representatives in commencing suit; (ii) notoriety and personal difficulties; (iii) amount of time and effort spent by the class representatives; (iv) duration of the litigation; and (v) personal benefit (or lack thereof) enjoyed by class representatives.

b. The Court reviewed Plaintiff's declaration outlining her involvement. Given the risks inherent in the services as the class representative, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Service Payment of \$10,000 to Plaintiff.

11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. The Court finds the Class Counsel Fees Payment of \$68,250, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Additionally, the Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs incurred of \$18,992.72, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also

not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or related in any manner to this lawsuit, Settlement Agreement, settlement administration, and/or Released Class Claims and Released PAGA Claims.

- a. The Court has an independent right and responsibility to review the Class Counsel Fees Payment and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The Class Counsel Fees Payment of ~~\$68,250 is thirty-five percent (35%)~~ ^{\$64,350.00 is thirty-three percent (33%)} of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the Class Counsel Fees Payment is consistent with the marketplace, is reasonable, and is approved.
- b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$15,000 in litigation costs. The Court finds Class Counsel expended \$18,992.72 in litigation costs, which somewhat exceeds the maximum amount permitted under the Settlement, and that such costs were reasonable. Thus, the Court approves the payment of the Class Counsel Litigation Expenses Payment of \$18,992.72 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Expenses Payment. The Court finds Administration Expenses Payment of \$8,250, to be paid by Defendant to the Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

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a. The Court reviewed the declaration of Lluvia Islas from Phoenix Class Action Administration Solutions, the Court-approved Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, constitutes the best practicable notice to the Class, and satisfied due process. Thus, the Court approves the payment of the Administration Expenses Payment of \$8,250 for the Administrator's services in administering the Settlement.

13. PAGA Penalties. The Court finds the PAGA Penalties of \$15,000, seventy-five percent (75%) of which (\$11,250) will be paid to the California Labor and Workforce Development Agency out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$3,750) shall be distributed to the Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Penalties is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding the Gross Settlement Amount. Defendant shall fund the first installment of the Gross Settlement Amount of \$55,000 no later than the Effective Date. Defendant shall fund the second installment of the Gross Settlement Amount of \$70,000 no later than thirty (30) calendar days after the payment of the first installment. Defendant shall fund the remaining amount of the Gross Settlement Amount of \$70,000 no later than thirty (30) calendar days after the payment of the second installment. Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail settlement checks to the appropriate entities and persons.

15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the Settlement was the product of arm's-length negotiations following extensive litigation, discovery, and exchange of documentation. The negotiations were facilitated with the aid of Jason Marsili, an experienced and well-respected mediator.

a. The fairness of the Settlement is demonstrated by there being no objections to and no requests for exclusion from the Settlement.

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b. The fairness of the Settlement is further illustrated by the gross *average* Individual Class Payment being approximately \$513.84, and the gross *highest* Individual Class Payment being about \$1,443.68.

16. Uncashed Checks. The Class Members must cash or deposit their settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them. Uncashed settlement checks will be canceled and transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member.

17. Modification of Agreement. The Participating Class Members are hereby authorized to agree to and adopt amendments to or modifications of the Agreement by an express written instrument signed by all Parties or their representatives and approved by the Court. Such amendments or modifications shall be consistent with this Order and Judgment and cannot limit the rights of the Participating Class Members under the Agreement.

18. Final Accounting and Compliance. The Court sets a compliance hearing on June 20, 2025 in Department 7. Within five (5) court days before this hearing, Plaintiff shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance status report shall specify the total amount paid to the Class Members and the residual of the unclaimed settlement funds that will be paid to the entity identified as the recipient of such funds in the Settlement Agreement.

19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and Judgment. This Court expressly retains jurisdiction for the administration, interpretation, effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment, and for any other necessary purpose, including, without limitation:

a. enforcing the terms and provisions of the Settlement and resolving any disputes, claims, or causes of action in this lawsuit that, in whole or in part, are related to or arise out of the Settlement or this Order and Judgment;

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- b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and Judgment approving the Settlement, and permanently enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of the Settlement; and
- c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is GRANTED. The Administrator is directed to carry out the terms of the Settlement forthwith.

THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

IT IS SO ORDERED.



A handwritten signature in black ink, appearing to read "Lawrence P. Riff", is written over the judge's name.

20. The reduction in the claimed attorneys' fees from 35 to 33% will result in the difference being added to the net settlement amount for class distribution.

DATED: _____
21. The court sets a non-appearance hearing for the withdrawal of the settlement proceeds for June 20, 2025 at 9:00 a.m. The Administrator shall file a declaration re same at least five court days before the hearing.

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On August 9, 2024, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Cendejas v. Performance Machine, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-913479-22**
Court Case No.: 22STCV33442
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on August 9, 2024, at Pasadena, California.



Mariah Anderson