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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS**

FRANCISCO RAMIREZ on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

MESSER LLC; and DOES 1-100,

Defendants.

Case No.: CV-23-002006

**[PROPOSED] ORDER GRANTING
PLAINTIFF FRANCISCO RAMIREZ’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, AND SETTING OF
FINAL APPROVAL HEARING DATE**

Date: November 7, 2024
Time: 8:30 a.m.
Judge: Hon. John Freeland
Dept.: 23

Complaint Filed: April 14, 2023
Trial Date: None Set

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action and
3 representative action (the “Action”). Plaintiff Francisco Ramirez has applied to this Court for an
4 order preliminarily approving the settlement of the Action in accordance with the Joint Stipulation
5 and Settlement Agreement (the “Agreement”), which together with the exhibit annexed thereto,
6 sets forth the terms and conditions for a proposed settlement and entry of judgment upon the terms
7 and conditions set forth therein. The Court has read and considered the Memorandum of Points
8 and Authorities in support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA
9 Action Settlement, Conditional Certification, Approval of Class Notice, and Setting of Final
10 Approval Hearing Date and the declaration submitted therewith. For purposes of this Order, the
11 Court adopts all defined terms as set forth in the Agreement.

12 **II. FINDINGS**

13 After review and consideration of the Agreement and Plaintiff’s motion for preliminary
14 approval and the papers in support thereof, the Court hereby finds and orders as follows:

15 1. The Agreement falls within the range of reasonableness meriting possible final
16 approval.

17 2. The certification of the Class solely for purposes of settlement is appropriate in
18 that: (a) the Class Members are ascertainable and so numerous that joinder of all Class Members
19 is impracticable; (b) there are questions of law and fact common to the Class which predominate
20 over any individual questions; (c) Plaintiff’s claims are typical of the claims of the Class; (d)
21 Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of
22 the Class; and (e) a class action and class-wide resolution of the action via class settlement
23 procedures is superior to other available methods for the fair and efficient adjudication of the
24 controversy.

25 3. The Agreement, and the obligations of the Parties as set forth therein, is fair,
26 reasonable, and is an adequate settlement of this case and is in the best interests of the Class in
27 light of the factual, legal, practical, and procedural considerations raised by this case.

1 4. Plaintiff does not have any conflicts that would preclude him from serving as Class
2 Representative, and his appointment comports with the requirements of due process.

3 5. Class Counsel does not have any conflicts that would preclude them from acting
4 as Class Counsel, and they meet the requirements for appointment as Class Counsel and the
5 requirements of due process.

6 6. The Notice of Class Action Settlement (“Class Notice”) attached as **Exhibit A** to
7 the Agreement complies with due process because the Class Notice is reasonably calculated to
8 adequately apprise Class Members of: (a) the pending lawsuit; (b) the terms of the proposed
9 Agreement; and (c) their rights, including the right to either participate in the settlement, exclude
10 themselves from the settlement, or object to the settlement. Plaintiff’s proposed plan for notifying
11 the Class Members and settlement administration is the best notice practicable under the
12 circumstances.

13 **III. ORDER**

14 The Court having considered the papers submitted in support of the motion for preliminary
15 approval, HEREBY ORDERS THE FOLLOWING:

16 1. The Court finds on a preliminary basis that the provisions of the Agreement are
17 fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

18 2. The following Class is conditionally certified for purposes of settlement only: All
19 persons employed by Defendant in California as a non-exempt driver from April 14, 2019 through
20 August 15, 2024.

21 3. The Agreement provides for the following Released Class Claims as to
22 Participating Class Members,¹ which is hereby approved conditionally: The Released Class
23 Claims include all claims under state, federal and local law that were or could have been asserted
24 based on the facts and allegations made in the Actions, and any amendments thereto, as to the
25 Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204,
26 210, 213, 218, 218.5, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 510, 512, 515, 558, 1174,

27 ¹ Participating Class Members are all Class Members who do not submit a valid and timely
28 request to exclude themselves from the settlement.

1 1174.5, 1194, 1194.2, and 1197, California Industrial Welfare Commission Wage Orders,
2 California Code of Regulations, Title. 8, section 11040, 11090, and 3395 *et seq.*, Business and
3 Professions Code sections 17200 *et seq.*, California Code of Civil Procedure section 1021.5, and
4 including all claims for or related to alleged unpaid wages, minimum wages, hours worked,
5 overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of
6 wages during employment, timely payment of wages at separation, wage statements, payroll
7 records and recordkeeping, meal periods and meal period premiums, rest breaks and rest break
8 premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or
9 matching benefits for payments received under the Settlement, unfair competition, unfair business
10 practices, unlawful business practices, fraudulent business practices, class actions, representative
11 actions, aggrieved party claims, declaratory relief, penalties of any nature (including but not
12 limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as
13 well as all other claims and allegations alleged in the Actions, during the Class Period.² Expressly
14 excluded from the release are claims for retaliation, discrimination, unemployment insurance,
15 disability, workers compensation, and claims outside the Released Class Claims.

16 4. This settlement also releases claims under the Private Attorneys General Act of
17 2004 (“PAGA”). These claims are asserted on behalf of PAGA Aggrieved Employees defined as:
18 All individuals employed by Defendant in California from April 10, 2022 through August 15,
19 2024.

20 5. The Agreement provides for the following Released PAGA Claims as to PAGA
21 Aggrieved Employees, which is hereby approved conditionally: PAGA Aggrieved Employees are
22 deemed to release all claims arising during the PAGA Period seeking civil penalties under PAGA,
23 that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent
24 permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA
25 Members, asserted or could reasonably have asserted based on the facts alleged in the Actions
26 and/or the LWDA letter, including but not limited to all claims arising under the California Labor

27 _____
28 ² The Class Period is April 14, 2019 through August 15, 2024.

Code including, but not limited to sections 201, 202, 203, 204, 210, 213, 218, 221, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 246, 246.5, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1, as alleged in the PAGA Action complaint, and the California Industrial Welfare Commission Wage Orders based on the facts alleged in the Actions. The Settlement shall release, and bar, all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members during the PAGA Period.³ PAGA Members cannot and do not have the right to opt out of the release of their PAGA claims against the Released Parties.

6. The settlement appears to be fair, adequate and reasonable to the Class. The settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the Final Approval Hearing and final approval by this Court.

7. Plaintiff is conditionally approved as the Class Representative for the Class.

8. The proposed Class Representative Enhancement Payment of \$5,000 payable to Plaintiff Francisco Ramirez for his services as class representative is conditionally approved.

9. Mara Law Firm, PC is conditionally approved as Class Counsel for the Class.

10. The proposed awards of up to \$150,000 in attorneys' fees and up to \$20,000 in actual costs payable to Class Counsel are conditionally approved.

11. A Final Approval Hearing on the question of whether the settlement, attorney's fees and costs to Class Counsel, and Class Representative Enhancement Payment should be finally approved as fair, reasonable and adequate as to Class Members is scheduled in Department 23 on the date and time set forth in the Implementation Schedule below.

12. The Court confirms Simpluris as the Settlement Administrator.

13. The proposed payment of up to \$10,000 in costs to Simpluris for its services as the Settlement Administrator is conditionally approved.

14. The Agreement provides from the Gross Settlement Amount a PAGA Payment of \$20,000 (75% of which shall be paid to the Labor and Workforce Development Agency, and 25%

³ The PAGA Period is April 10, 2022 through August 15, 2024.

of which shall be distributable to PAGA Aggrieved Employees).

15. The Court approves, as to form and content, the Class Notice in substantially the form attached as **Exhibit A** to the Agreement. The Court approves the procedure for Class Members to participate in, to opt out of, and to object to, the settlement as set forth in the notice.

16. The Court directs the mailing of the Class Notice by first class mail to Class Members in accordance with the Implementation Schedule below. The Court finds the dates selected for the mailing and distribution of the notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

IV. IMPLEMENTATION SCHEDULE

The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to submit Class and PAGA Data to Settlement Administrator	30 calendar days from the date of this Order (<i>i.e.</i> , December 9, 2024, ⁴ if preliminary approval is granted on November 7, 2024)
Deadline for Settlement Administrator to Mail Class Notices to Class Members	15 calendar days from receipt of the Class Data (<i>i.e.</i> , December 24, 2024)
Deadline for Class Members to Postmark Requests for Exclusion, Objections, or Disputes (“Response Deadline”)	45 calendar days from the mailing of the Class Notices (<i>i.e.</i> , February 7, 2025)
Deadline for Class Counsel to file a Motion for Final Approval	16 court days prior to the Final Approval Hearing
Deadline to Provide the Court with the Settlement Administrator’s Declaration Outlining Requests for Exclusion, Objections, and Disputes	16 court days prior to the Final Approval Hearing

⁴ The thirtieth day following November 7, 2024, is a Saturday. December 9, 2024, is the next business day.

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Final Approval Hearing and Final Approval	_____, 2025 at 8:30 a.m.
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IT IS SO ORDERED.

Dated: _____

By _____
Honorable John Freeland
Stanislaus County Superior Court Judge