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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO
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11 JUAN CARLOS BAUTISTA and JAIME
12 CERVANTES, individually, on a
13 representative basis, and on behalf of all
others similarly situated;

14 Plaintiff,

15 vs.

16 SERVICEFIRST RESTORATION, INC.,
17 a California Corporation; and DOES 1
through 20, inclusive;

18 Defendants.
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Case No.: CIVSB2302978
*[Assigned to Hon. Joseph Ortiz, Dept S17, for
all purposes]*

[PROPOSED] ORDER:

- 1) **PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT;**
 - 2) **CONDITIONALLY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES ONLY;**
 - 3) **DIRECTING DISTRIBUTION TO THE
CLASS OF THE SETTLEMENT
NOTICE AND EXPLANATION FORM;
AND**
 - 4) **SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**
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1 Having considered the Class Action and PAGA Settlement Agreement and Release (the
2 “Settlement Agreement”) between Plaintiffs Juan Carlos Bautista and Jaime Cervantes and
3 Defendant ServiceFirst Restoration, Inc. (“Defendant”) (collectively, the “Parties”), as well as
4 the Memorandum of Points and Authorities in Support of the Unopposed Motion for Preliminary
5 Approval of Class Action Settlement, the documents submitted in support of the motion, and all
6 supporting legal authorities and documents, IT IS HEREBY ORDERED:

7 1. The Court GRANTS preliminary approval of the Settlement based upon the terms
8 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
9 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
10 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
11 review of the papers submitted by Plaintiffs, the Court finds that the Settlement is the result of
12 arms-length negotiations conducted after the Parties adequately investigated and became familiar
13 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
14 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

15 2. For settlement purposes only, the Court finds that the proposed Class is
16 ascertainable and that there is a sufficiently defined community of interest among the Class
17 Members in questions of law and fact. The Court, therefore, conditionally certifies the following
18 Class, for settlement purposes only: All Independent Contractors and Hourly Employees during
19 the Class Period.

20 3. The following definitions are set forth in the Settlement Agreement:

21 a. “Class Period” is deemed to be any time during the period of May 12,
22 2019, through January 31, 2024.

23 b. “Independent Contractor” means “the sixteen (16) individuals that
24 performed contracting field/service work for Defendant in California and who Defendant
25 classified as independent contractors during the Class Period”; Defendant shall transmit the
26 names of the Independent Contractors confidentially to the Administrator for privacy purposes.

27 c. “Hourly Employees” means “all nonexempt employees employed by
28 Defendant in California during the Class Period.”

1 d. “Aggrieved Employees” means “all Independent Contractors and Hourly
2 Employees during the PAGA Period

3 e. “PAGA Period” is May 12, 2022, through January 31, 2024.

4 4. The class action settlement set forth in the Settlement Agreement between
5 Plaintiffs and Defendant is preliminarily approved as it appears to be proper, to fall within the
6 range of a fair, reasonable and adequate settlement, and to be presumptively valid, subject only
7 to any objections that may be raised at the Final Approval Hearing.

8 5. For settlement purposes only, the Court appoints Juan Carlos Bautista and Jaime
9 Cervantes as Class Representatives, and Brian Mankin and Peter Carlson as Class Counsel.

10 6. The Court approves Phoenix Settlement Administrators to act as the Settlement
11 Administrator.

12 7. The Court approves, as to form and content, the Class Notice (attached as Exhibit
13 “2” to the Declaration of Brian Mankin, Esq. filed on or about July 11, 2024) and finds that the
14 Class Notice satisfies the requirements of California Rule of Court, rules 3.766 and 3.769, subd.
15 (f), and fairly apprises the Class Members of the terms of the final approval hearing date, the
16 proposed settlement terms and of their options, including: (1) the nature of the action, the
17 definition of the Class, the identity of Class Counsel, and the essential terms of the Settlement;
18 (2) Named Plaintiffs’ and Class Counsel’s applications for the Class Representative Service
19 Payments, and Class Counsel’s request for attorneys’ fees and costs; (3) a formula used to
20 determine the Class Member’s estimated Individual Class Payment; (4) Class Members’ rights to
21 appear through counsel if they desire; (5) how to object to the Settlement or submit an opt-out
22 request if a Class Member wishes to do so; and (6) how to obtain additional information
23 regarding the action and the Settlement. Counsel for the Parties are authorized to correct any
24 typographical errors in settlement and make clarifications, to the extent the same are found or
25 needed, so long as such corrections do not materially alter the substance of the documents.

26 8. The Court approves the procedure for Class Members to participate in, request
27 exclusion from or object to, and preserve appeal rights as set forth in the Settlement Agreement
28 and the Class Notice.

1 9. The Court finds that the deadlines and method set forth in the Settlement
2 Agreement for the mailing of the Class Notice meet the requirements of due process, provide the
3 best notice practicable under the circumstances, constitute due and sufficient notice to all persons
4 entitled to notice, and otherwise satisfy the requirements of California law and due process.

5 10. The Court directs the Settlement Administrator to perform address verification
6 measures and mail the Class Notice by first class mail to the Class Members as set forth in the
7 timeline below and to otherwise carry out the Settlement according to the terms of the Settlement
8 Agreement and in conformity with this Order. The Parties are also ordered to carry out the
9 Settlement according to the terms of the Settlement Agreement.

10 11. All Class Members shall be deemed to participate in the Settlement, although any
11 Class Member who wishes to comment on or object to the Settlement or who elects not to
12 participate in the Settlement has until 30 days after the mailing of the Class Notice to submit his
13 or her objection or Request to be Excluded, pursuant to the procedures set forth in the Class
14 Notice.

15 12. The Court approves the handling of unclaimed funds set forth in the Settlement
16 Agreement, specifically that any unclaimed funds in the Settlement Administrator's account as a
17 result of a failure to timely cash a settlement check shall be issued to the State Controller's
18 Office in the name of the Class Member, as set forth in the Settlement Agreement.

19 13. The following dates shall govern for purposes of this settlement:

20 August 5, 2024	Preliminary Approval (PA) hearing
21 August 29, 2024	<u>24 days after PA</u> : Deadline for Administrator to complete first 22 mailing of the Notice to all Class Members.
23 September 28, 2024	<u>30 days after mailing Notice</u> : Deadline for Class Members to 24 submit Requests for Exclusion and Objections to the settlement.
25 16 court days before Final 26 Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final 27 Approval and application for award of fees, costs and service 28 payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval

1 Date: _____

Final Approval Hearing

2 Time: _____

Proposed date: November 25, 2024, which is approx. 110 days after PA)

4 14. A final approval hearing shall be held in this Court on the date and time above to
5 determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be
6 finally approved by the Court; (2) the amount of the Attorneys' Fees and Costs Award to Class
7 Counsel; and (3) the amount of the Service Payments to the Class Representatives. The Court
8 may continue or adjourn the final approval hearing without further notice to the Class Notice.

9 15. Counsel for the parties shall file memoranda, declarations, or other statements and
10 materials in support of their request for final approval of the Settlement, attorneys' fees,
11 litigation costs, Class Representatives' Service Payments, Settlement Administration Costs, and
12 payment to LWDA for PAGA penalties prior to the Final Approval hearing according to the time
13 limits set by the Code of Civil Procedure and the California Rules of Court.

14 16. Neither this Order, the Settlement Agreement, nor any document referred to
15 therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement
16 may be construed as, or may be used as an admission by or against Defendant or any of the other
17 Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing
18 or liability whatsoever. The entering into or carrying out of the Settlement Agreement, and any
19 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to
20 be evidence of, an admission or concession with regard to the denials or defenses by Defendant
21 or any of the other Released Parties and shall not be offered in evidence in any action or
22 proceeding against Defendant or any of the Released Parties in any court, administrative agency
23 or other tribunal for any purpose whatsoever other than to enforce the provisions of this Order,
24 the Settlement Agreement, or any related agreement or release.

25 17. The Court may, for good cause shown, extend any of the deadlines set forth in
26 this Order.

27 18. In the event that the Settlement Agreement does not receive final approval or the
28 Effective Date of the Settlement does not occur, this Order shall be rendered null and void and

1 shall be vacated.

2 19. Pending the Final Approval hearing, all proceedings in this action, other than
3 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
4 Order, are stayed.

5 20. Counsel for the parties are hereby authorized to utilize all reasonable procedures
6 in connection with the administration of the Settlement which are not materially inconsistent
7 with either this Order or the terms of the Settlement.

8 IT IS SO ORDERED.

9 Date: _____

10 Hon. Joseph Ortiz