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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN MATEO**

10 MARTIN AERON ARIAS, individually, and on
behalf of other members of the general public
11 similarly situated, and as an aggrieved employee
pursuant to the Private Attorneys General Act
12 (“PAGA”),

13 Plaintiff,

14 vs.

15 BERG SENIOR SERVICES, LLC, a California
limited liability company; and DOES 1 through
16 10, inclusive,

17 Defendants.
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FILED

By Superior Court of California, County of San Mateo

ON 07/29/2026

By /s/ Singh, Padmani

Deputy Clerk

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7/20/2026

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

Case No. 24-CIV-04622

Assigned to the Hon. Nancy L. Fineman

NF
**~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Complaint Filed: July 25, 2024

Trial Date: None Set

1 Plaintiff Martin Aeron Arias’s (“Plaintiff”) unopposed Motion for Final Approval of Class
2 Action and PAGA Settlement came on regularly for hearing before this Court on June 23, 2026, in
3 Department 4 of the above-entitled Court, the Honorable Nancy L. Fineman presiding. The Court,
4 having considered the moving papers, the Joint Stipulation of Class Action and PAGA Settlement (the
5 “Settlement”), the declarations and exhibits submitted in support thereof, the record in this action, and
6 having conducted its own independent review of the Settlement, and good cause appearing, HEREBY
7 ORDERS as follows:

8 1. On February 17, 2026, the Court granted preliminary approval of the class action and
9 PAGA settlement in this action. In connection with preliminary approval, the Court, among other things,
10 preliminarily approved the Settlement as fair, reasonable, and adequate; conditionally certified the
11 Settlement Class for settlement purposes; approved Capstone Law APC as Class Counsel; approved
12 Martin Aeron Arias as the class representative for the Settlement Class; approved Phoenix Settlement
13 Administrators as the settlement administrator; approved the form, content, and method of class notice;
14 and set the deadlines governing the notice and response process.

15 2. The Court hereby incorporates by reference, as though fully set forth herein, all of the
16 findings, conclusions, and determinations set forth in its February 17, 2026 ruling, including but not
17 limited to the Court’s findings regarding the arm’s-length nature of the negotiations, the adequacy of the
18 investigation and discovery, the experience of Class Counsel, the reasonableness of the Settlement
19 amount, the allocation of the Settlement between the class claims and the PAGA claims, the elements of
20 class certification for settlement purposes, and the adequacy of the class notice. Those findings are
21 reaffirmed and supplemented by the findings set forth below.

22 3. In ruling on settlements involving class and PAGA claims, the Court has a duty to
23 independently determine whether a settlement is fair, reasonable, and adequate. (*Moniz v. Adecco USA,*
24 *Inc.* (2021) 72 Cal.App.5th 56, 76–77, disapproved of on other grounds by *Turrieta v. Lyft, Inc.* (2024)
25 16 Cal.5th 664 [a “trial court should evaluate a PAGA settlement to determine whether it is fair,
26 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter
27 future ones, and to maximize enforcement of state labor laws”]; *Kullar v. Foot Locker Retail, Inc.* (2008)
28 168 Cal.App.4th 116, 129 [the court “has a fiduciary responsibility as guardians of the rights of the

absentee class members when deciding whether to approve a settlement agreement”]; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.)

4. Review of a proposed class action settlement typically involves a two-step process: preliminary approval and a subsequent final approval hearing. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118; Cal. Rules of Court, rule 3.769; Code Civ. Proc., § 581, subd. (k).) Precertification settlements are scrutinized carefully, and are routinely approved where they are found to be fair, adequate, and reasonable. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

5. “Due regard” should be given to what is otherwise a private consensual agreement between the parties, and the inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not whether the maximum amount is secured, but whether the settlement is reasonable under all the circumstances. (*Cho, supra*, 177 Cal.App.4th at p. 745.)

6. The Court possesses broad discretion to determine the fairness of a settlement, exercised through the application of identified criteria, including “[1] the strength of plaintiffs’ case, [2] the risk, expense, complexity and likely duration of further litigation, [3] the risk of maintaining class action status through trial, [4] the amount offered in settlement, [5] the extent of discovery completed and the stage of the proceedings, [6] the experience and views of counsel, ... and [7] the reaction of the class members to the proposed settlement.” (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) The list is not exhaustive and “should be tailored to each case.” (*Ibid.*) 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. (*Ibid.*)

7. While the Court places reliance on counsel’s opinion, the Court “must also receive and

1 consider enough information about the nature and magnitude of the claims being settled, as well as the
2 impediments to recovery, to make an independent assessment of the reasonableness of the terms to
3 which the parties have agreed,” and “must at least satisfy itself that the class settlement is within the
4 ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at p. 133; see *Tech-Bilt, Inc. v.*
5 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500.)

6 8. The action alleges wage and hour violations. There are 431 class members, with a
7 proposed settlement amount of \$1,100,000.00. The Settlement provides a payment of \$60,000 to the
8 California Labor and Workforce Development Agency (“LWDA”) (i.e., 75% of the \$80,000 amount
9 allocated to resolve the PAGA allegations). The remaining \$20,000 shall be distributed amongst
10 Aggrieved Employees. The average payment to participating class members is \$1,437.90, and the
11 highest is \$3,374.84. (Declaration of Kevin Lee ¶¶ 6–8.)

12 9. Plaintiff provided notice to the LWDA as required by Labor Code section 2699.3,
13 subdivision (a)(1)(A). (First Amended Complaint, ¶ 33, Ex. 1.) The LWDA has not objected. (Perez
14 Decl., ¶ 3.) The Court finds that the allocation of the Settlement between the class claims and the PAGA
15 claims is fair and reasonable. (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589.)

16 10. The Settlement was negotiated at arm’s length. The parties participated in mediation
17 with mediator Louis Marlin on April 28, 2025, which resulted in the Settlement. Prior to mediation,
18 Defendant produced class data and a sample of Class Members’ time and pay records so that Class
19 Counsel could fully investigate the claims. Class Counsel presented liability and damages estimates
20 based on their evaluation of the records received through discovery and discounted their estimates based
21 on the risks inherent to class action litigation. Settling for a lesser amount than might be received at trial
22 is reasonable given those risks, the cost of going forward, and the time value of money.

23 11. There has been sufficient investigation and discovery, and Class Counsel is experienced
24 in similar litigation. Class Counsel conducted informal discovery and Defendant contested liability. Mr.
25 Perez of Class Counsel firm Capstone Law APC provided information as to his and his colleagues’
26 experience and qualifications in wage and hour class actions, including PAGA actions. (Perez Decl., ¶¶
27 24–32.)

28 12. The Settlement avoids the risk and uncertainty of litigation. The law favors settlement,

1 and the fact that the class might be able to obtain more from a trial must be balanced against the risk of
2 not having a class certified, of receiving less than the settlement (including a defense verdict), the time
3 and money that it would take to try the case and to litigate through a potential appeal, and the potential
4 for a change in the law.

5 13. Having reviewed the evidence presented and having conducted its independent review,
6 the Court finds that all of the conditions for final approval have been met. The Court finds that the
7 Settlement is fair, adequate, and reasonable, and gives final approval to the Settlement, including the
8 allocation between the class settlement and the PAGA settlement. (Code Civ. Proc., § 382; *Richmond v.*
9 *Dart Industries* (1981) 29 Cal.3d 462, 470.)

10 14. The Court reaffirms its findings as to the elements of class certification for settlement
11 purposes, as set forth in the February 17, 2026 ruling and as supplemented here:

- 12 a. Numerosity and Ascertainability. Plaintiff defines the class according to
13 objective criteria, and the class member identities are available from
14 Defendant's regular business records. The class consists of 431 individuals,
15 making joinder impracticable. The class is ascertainable in that the class
16 members have already been identified by Defendant and they received notice of
17 the Settlement.
- 18 b. Commonality / Community of Interest. Common issues predominate over
19 whether Defendant violated wage and hour laws. There is a community of
20 interest in that common questions of law and fact predominate involving
21 whether Defendant properly calculated employee compensation. For settlement
22 purposes, this community of interest is sufficient.
- 23 c. Typicality. Plaintiff/class representative Martin Aeron Arias's claims are typical
24 of the class claims because he is alleged to have suffered the same injury as
25 other class members, and there is no information to the contrary.
- 26 d. Adequacy of Representation. Plaintiff adequately represents the class and has
27 experienced class counsel. Plaintiff has demonstrated that his counsel is
28 adequate to represent the class, and Plaintiff established that he understood his

1 role as class representative and performed it to the best of his ability.

2 e. Superiority. The superiority requirement is satisfied because of the benefits and
3 efficiencies of the Settlement when compared to continued litigation of the case
4 on either a class basis or through multiple individual lawsuits.

5 15. The Court previously found the contents of the settlement notice to be substantively
6 adequate and the method of notice—first class mail—to be sufficient. (Cal. Rules of Court, rule 3.769(f);
7 *Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 694; *City of San Diego v. Haas* (2012)
8 207 Cal.App.4th 472, 502; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 57; *Wershba, supra*, 91
9 Cal.App.4th at p. 251.)

10 16. According to the declaration of Kevin Lee of Phoenix Settlement Administrators
11 (“Phoenix”), the approved settlement administrator, on February 17, 2026, Phoenix received a class list
12 from Class Counsel; on March 9, 2026, Phoenix received an updated list from defense counsel; and on
13 March 9, 2026, Phoenix mailed 431 class notices with addresses updated through the National Change
14 of Address database. (Lee Decl., ¶¶ 3, 4.) Eighteen notices were returned; fourteen packages were re-
15 mailed with better mailing addresses, and four notices were unable to be re-mailed. (*Id.*, ¶¶ 4, 5.) There
16 have been no objections and no valid requests for exclusion. (*Id.*, ¶¶ 6, 7.)

17 17. The Court finds that the notice program was implemented in accordance with the
18 Court’s February 17, 2026 order, constituted the best notice practicable under the circumstances, and
19 satisfied the requirements of California Rules of Court, rule 3.769 and due process.

20 18. For the reasons discussed above, the Motion for Final Approval of Class Action and
21 PAGA Settlement is GRANTED. The Settlement is finally approved as fair, reasonable, and adequate,
22 and the allocation between the class settlement and the PAGA settlement is approved.

23 19. Class Counsel’s request for attorneys’ fees is DENIED WITHOUT PREJUDICE.
24 Although a common fund fee is appropriate here, even a proper common fund-based fee award should
25 be reviewed through a lodestar cross-check. (*Lafitte v. Robert Half International* (2016) 1 Cal.5th 480,
26 503.) The burden is on class counsel to prove the reasonable number of hours expended on the case
27 (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 883), and counsel must
28 further demonstrate that the requested hourly rates are reasonable for San Mateo County, where this case

1 is venued, because “[t]he reasonable hourly rate is that prevailing in the community for similar work.”
2 (*Tidrick v. FCA US LLC* (2025) 112 Cal.App.5th 1147, 1157, quoting *PLCM Group, Inc. v. Drexler*
3 (2000) 22 Cal.4th 1084, 1095.) The evidence submitted to date does not make that showing as to the
4 prevailing rates in this community, and the supporting declaration provides only a summary chart of
5 hours worked together with a general overview of the litigation, which does not permit the Court to
6 assess whether the work performed was reasonable, whether there was duplicative billing among the
7 eight attorneys who worked on the matter, or how much time was devoted to any particular task. While
8 detailed billing timesheets are not required, the declarations must be sufficiently detailed to allow the
9 Court to make those determinations. (See *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th
10 1309, 1324–1325; *Association for Los Angeles Deputy Sheriffs v. Macias* (2021) 63 Cal.App.5th 1007,
11 1031.) Plaintiff is granted leave to file a renewed motion addressing attorneys’ fees, litigation costs,
12 settlement-administration expenses, and the Class Representative Service Award. A hearing on the
13 renewed motion has been reserved for September 15, 2026, at 2:00 p.m. in Department 4.

14 20. Because the Net Settlement Fund is the Gross Settlement Amount less, *inter alia*, the
15 approved amounts for attorneys’ fees and costs, the Class Representative Service Award, and settlement-
16 administration expenses, the precise amount of the Net Settlement Fund to be distributed to Class
17 Members cannot be calculated until the Court determines the reasonable amounts to be awarded in those
18 categories. Disbursement to the Settlement Class is therefore stayed pending resolution of the renewed
19 motion.

20 21. The Court retains jurisdiction over the parties and the Settlement for purposes of
21 administering, construing, and enforcing the Settlement and this Order, and for purposes of ruling on the
22 renewed motion for attorneys’ fees, costs, settlement-administration expenses, and the Class
23 Representative Service Award.

24
25 **IT IS SO ORDERED.**

26 Dated: _____

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SIGNED

By /s/ Fineman, Nancy

07/27/2026

Hon. Nancy L. Fineman
San Mateo County Superior Court Judge

PROOF OF SERVICE

I, Simone Cigar, am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On July 20, 2026, I served the document described as: **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties on the attached service list:

DONAHUE FITZGERALD LLP 1999 Harrison Street, 26th Floor Oakland, CA 94612 Merrill J. Schwartz mschwartz@donahue.com Andrew R. Shalauta ashalauta@donahue.com Christopher R. Nepacena cnepacena@donahue.com Telephone: 510-451-3300 Facsimile: 510-451-1527	<i>Attorneys for Defendant:</i> BERG SENIOR SERVICES, LLC, a California limited liability company; and DOES 1 through 10, inclusive,
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- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.
- ☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 20th, 2026, in Los Angeles, California.

Simone Cigar

Type/Print Name

Signature

