

FILED
Superior Court of California
County of Los Angeles

FEB 19 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FERNANDO BARRERA, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

ARVATO DIGITAL SERVICES LLC, and
DOES 1 through 100,

Defendants.

Case No.: 19STCV22566

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: February 19, 2021

Dept.: SSC-7

Time: 10:00 a.m.

I. BACKGROUND

Plaintiff Fernando Barrera sues his former employer, Defendant Arvato Digital Services LLC, for various wage and hour violations. Defendant is in the business of providing business solution services, including financial services and IT services to individuals and businesses.

1 On June 28, 2019, Plaintiff filed the instant action in Los Angeles County
2 Superior Court, alleging class claims for meal period violations, rest period violations,
3 wage statement violations, and unfair competition. On September 30, 2019, Plaintiff
4 filed a First Amended Complaint, which added a claim for civil penalties under the
5 PAGA. On November 18, 2019, Plaintiff filed a Second Amended Complaint, which
6 dismissed without prejudice the claim for Wage Statement Violations under Labor
7 Code § 226 et seq. and the claim for civil penalties under the PAGA.

8 On May 12, 2020, the Parties attended a mediation with Louis Marlin, Esq., a
9 wage and hour class action mediator, at the end of which the Parties executed a
10 Memorandum of Understanding setting forth the material terms of the Parties'
11 agreement to resolve this matter. Thereafter, the Parties finalized and executed the
12 *Joint Stipulation Re: Class Action Settlement* ("Settlement Agreement"), a copy of
13 which was filed with the Court.

14 Pursuant to the Settlement Agreement, the Parties stipulated to Plaintiff's filing
15 of a Third Amended Complaint ("TAC"). The operative TAC was filed on January 4,
16 2021, and alleges causes of action for: (1) meal period violations (Labor Code §§ 226.7
17 and 512); (2) rest period violations (Labor Code §§ 226.7 and 512); (3) wage statement
18 violations (Labor Code § 226 et seq.); (4) waiting time penalties (Labor Code §§ 201-
19 203); (5) unfair competition (Bus & Prof Code § 17200 et seq.); and (6) civil penalties
20 under the Private Attorneys General Act (Labor Code § 2698 et seq.)

21 On December 22, 2020, the Court reviewed Plaintiff's motion for preliminary
22 approval and issued a list of concerns for the parties to address by the hearing date. On
23 February 3, 2021, Plaintiff filed supplemental briefing in response, including a revised
24 Settlement Agreement, attached to Plaintiff's Supplemental Briefing as Exhibit B.
25

1 The previously issued a tentative ruling proposing to grant preliminary approval
2 on condition that the parties address the following issues:

3 (1) The release of class claims should specify that Class Members will only
4 release claims alleged in, or arising out of facts asserted in, the operative Third
5 Amended Complaint only;

6 (2) The Release and Notice should specifically explain that the PAGA claims
7 will be released, and that the PAGA portion of the settlement payment will be
8 distributed to all Class Members, whether or not a Class Member opts out (See
9 *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476);

10 (3) Provide a provision in the Settlement Agreement describing how notices
11 returned to the administrator as undeliverable will be handled, and address whether
12 Class Members who receive re-mailed Notices will be given an extended deadline to
13 respond; and

14 (4) Provide a procedure and deadline in the Settlement Agreement and Notice
15 for Class Members to submit disputes as to workweeks and/or their estimated payment
16 amount to the settlement administrator.

17 The parties have addressed these issues in supplemental filings submitted on
18 February 16, 2021.

19
20 **II. THE TERMS OF THE SETTLEMENT**

21 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

22 Class Members. The term “Class Members” shall mean: “All persons who have
23 worked for defendant Arvato Digital Services LLC as non-exempt employees in the
24 State of California at any time during the Class Period who have not already released
25 any and all claims they may have possessed against Defendant, excluding persons who

1 worked for Defendant as non-exempt employees at Defendant's Ontario, California
2 facility between April 3, 2017 and November 6, 2019." (§1.e)

3 The term "Class Period" shall mean the time period from June 28, 2015 to the
4 Preliminary Approval Date. (§1.f)

5 "Participating Class Members" means Class Members who do not effectively
6 and/or timely opt-out from the Settlement in the manner provided in Paragraphs 11 and
7 20(d). (§1.s)

8 9 **B. THE MONETARY TERMS OF SETTLEMENT**

10 The essential monetary terms are as follows:

11 The Total Class Settlement Amount is **\$350,000** (§1.aa). This includes payment of
12 a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000) and 25% to the
13 Aggrieved Employees (\$5,000) (§1.r);

14 Escalator Clause: If, as of the end date of the Class Period, the number of Class
15 Members is greater than 318, Defendant shall increase the Total Class Action Settlement
16 Amount proportionally for each Class Member over 318 (i.e., the Total Class Action
17 Settlement Amount will be increased by \$1,100.63 for each Class Member over 318).
18 (§13)

19
20 The Net Settlement Amount ("Net") (**\$173,833.33**) is the Total Class Settlement
21 Amount less:

- 22 ○ Up to **\$116,666.67** (33 1/3%) for attorney fees (§18.a);
- 23 ○ Up to **\$20,000** for attorney costs (§18.b);
- 24 ○ Up to **\$7,500** for a service award to the proposed class representative
25 (§18.c); and

1 o Estimated **\$12,000** for settlement administration costs (§18.d).

2 • Employer-side payroll taxes will be paid separate and apart from the Total Class
3 Settlement Amount (§20.h).

4 • Assuming the Court approves all maximum requested deductions, approximately
5 \$173,833.33 will be available for automatic distribution to participating class
6 members. Assuming full participation, the average settlement share will be
7 approximately \$546.65. ($\$173,833.33 \text{ Net} \div 318 \text{ class members} = \546.65). In
8 addition, each class member will receive a portion of the PAGA penalty,
9 estimated to be \$15.72 per class member. ($\$5,000 \text{ or } 25\% \text{ of } \$20,000 \text{ PAGA}$
10 $\text{penalty} \div 318 \text{ class members} = \15.72)

11 • There is no Claim Requirement (Notice pg. 3).

12 • The settlement is not reversionary (§19).

13 • Individual Settlement Share Calculation: The Net Settlement Amount shall be
14 divided by the number of aggregate qualified weeks worked by all Participating
15 Class Members during the Class Period to produce a “Weekly Settlement
16 Value.” A “qualified week” shall be a week worked by a Participating Class
17 Member in California in a non-exempt job position. Each Participating Class
18 Member shall be eligible to receive a settlement payment in the amount of the
19 total number of qualified weeks the Participating Class Member worked for
20 Defendant during the Class Period multiplied by the Weekly Settlement Value,
21 less applicable withholdings. Class Members who submit timely and valid
22 Requests for Exclusion in the manner set forth in Paragraph 20(d) will not
23 receive a share of the Net Settlement Amount. (§18.f) Aggrieved employees will
24 receive a check for their share of PAGA penalties regardless whether they opt
25 out (§11).

- 1 • Tax Withholdings: 50% as wages; 50% as interest and penalties (§20.g).
- 2 • Uncashed Settlement Payment Checks: In the event that an Individual Settlement
3 Award is paid to a Class Member by check and the check is not cashed on or
4 before the Check Cashing Deadline, the amount of the Individual Settlement
5 Award shall be considered unclaimed. Each unclaimed Individual Settlement
6 Award paid to a Class Member but not cashed on or before the Check Cashing
7 Deadline shall be tendered to the State of California Unclaimed Property Fund in
8 the Class Member's name. (§19) The term "Check Cashing Deadline" shall
9 mean one hundred eighty (180) days after an Individual Settlement Award is
10 issued to a Class Member by check. (§1.b)
- 11 • Payment Of Settlement Amount: Not later than seven (7) calendar days
12 following the Effective Date, Defendant shall deposit the Total Class Action
13 Settlement Amount, into an account established by the Settlement Administrator.
14 (§30)

15 16 **C. TERMS OF RELEASES**

- 17 • Class members will release: Any and all claims, actions, demands, causes of
18 action, suits, debts, obligations, damages, rights or liabilities that have been
19 asserted by Plaintiff, or the Class Members or any of their respective heirs,
20 executors, administrators, beneficiaries, predecessors, successors, attorneys,
21 assigns, agents, and/or representatives arising out of any claims that were
22 encompassed in the Action, and any claims which reasonably flow from the facts
23 alleged in Plaintiff's Third Amended Complaint including, but not limited to:
24 claims under federal, state, or local law for failure to provide compliant meal
25 and/or rest periods or proper premium payments in lieu thereof, interest,

1 statutory and civil penalties (including waiting time penalties pursuant to Labor
2 Code section 203, wage statement and recordkeeping penalties pursuant to Labor
3 Code sections 226 and 1174, and civil penalties pursuant to the Labor Code
4 Private Attorneys General Act of 2004 (Labor Code sections 2698, et seq.)
5 (“PAGA”)), claims pursuant to Labor Code sections 201, 202, 203, 204, 218.5,
6 218.6, 226, 226.3, 226.7, 512, 516, 1174, 1194, and 2698, et seq., the Industrial
7 Welfare Commission Wage Orders relating to claims for meal periods and rest
8 breaks, and claims under Business and Professions Code sections 17200, et seq.,
9 claims for attorneys’ fees and costs, conversion, fraud, common count, and
10 unfair business practices. Released Class Claims include all claimed or
11 unclaimed compensatory, consequential, incidental, liquidated, punitive and
12 exemplary damages, restitution, interest, costs and fees, injunctive or equitable
13 relief, and any other remedies available at law or equity allegedly owed or
14 available to the Class arising or reasonably flowing from Third Amended
15 Complaint against the Released Parties for the time period from June 28, 2015
16 up to and including the Preliminary Approval Date. (¶15) Class members who
17 opt out will release claims for civil penalties under PAGA and be issued a check
18 for their share of the PAGA allocation. (¶¶ 11, 20.d.)

- 19 • The named Plaintiff will also provide a general release and a waiver of the
20 protections of Cal. Civ. Code §1542. (¶16)
- 21 • The releases are effective as of the date Defendant delivers the Total Class
22 Action Settlement Amount to the Settlement Administrator. (¶15)

23
24 **D. SETTLEMENT ADMINISTRATION**

- 1 • The proposed Settlement Administrator is CPT Group Class Action
2 Administrators. (¶1.x)
- 3 • Settlement administration costs are estimated to be **\$12,000** (¶18.d).
- 4 • Notice: The manner of giving notice is described below.
- 5 • Opt Out/Objection Dates: The term “Document Receipt Deadline” shall mean
6 forty-five (45) days after the Notices are mailed to Class Members by the
7 Settlement Administrator. (¶1.k) It is the date by which any Requests for
8 Exclusion (¶20.d) or written objections (¶10) must be postmarked and mailed to
9 the Claims Administrator. A procedure for resolving disputes as to qualifying
10 workweeks is set forth in ¶ 10A.
- 11 • Defendant reserves the right to revoke this Stipulation and the Settlement provided
12 for herein if more than ten percent (10%) of Class Members opt out of the
13 Settlement by submitting timely and valid Requests for Exclusion in the manner
14 set forth in Paragraph 20, subparagraph (d). (¶12)
- 15 • Notice of Final Judgment will be posted on the Settlement Administrator’s website
16 (Notice pg. 5).

17 **E. ATTORNEYS’ FEES**

18 Counsel for the proposed class seek **\$116,666.67** (33 1/3%) in attorney’s fees and
19 **\$20,000** in costs. (¶¶ 18.a, 18.b).

21 **F. SERVICE AWARDS**

22 The named plaintiff seeks: **\$7,500** (¶18.c).

24 **III. SETTLEMENT STANDARDS AND PROCEDURE**

1 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
2 of an entire class action, or of a cause of action in a class action, or as to a party,
3 requires the approval of the court after hearing.” “Any party to a settlement agreement
4 may serve and file a written notice of motion for preliminary approval of the settlement.
5 The settlement agreement and proposed notice to class members must be filed with the
6 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
7 Court, rule 3.769(c).

8 “In a class action lawsuit, the court undertakes the responsibility to assess
9 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
10 dismissal of a class action. The purpose of the requirement [of court review] is the
11 protection of those class members, including the named plaintiffs, whose rights may not
12 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
13 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
14 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
15 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
16 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
17 agreement to the extent necessary to reach a reasoned judgment that the agreement is
18 not the product of fraud or overreaching by, or collusion between, the negotiating
19 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
20 concerned.”] [internal quotation marks omitted].

21 “The burden is on the proponent of the settlement to show that it is fair and
22 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
23 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
24 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
25

1 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’
24 this is no bar to a class settlement because ‘the public interest may indeed be served by
25

1 a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.” *Id.* at 250.

3
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

7 The settlement is entitled to a presumption of fairness for the following reasons:

8
9 **1. The settlement was reached through arm’s-length bargaining**

10 On May 12, 2020, the Parties attended a mediation with Louis Marlin, Esq., a
11 wage and hour class action mediator, at the end of which the Parties executed a
12 Memorandum of Understanding setting forth the material terms of the Parties’
13 agreement. Thereafter, the Parties finalized and executed the Settlement Agreement.
14 (Declaration of Sam Sani ¶¶ 23-24.)

15
16 **2. The investigation and discovery were sufficient**

17 Class Counsel represents that in connection with mediation, Defendant provided
18 Plaintiff an estimated putative class count and workweek count and produced a
19 sampling of putative class members’ timekeeping and payroll data. Defendant also
20 produced its relevant wage and hour policies and practices during the Class Period.
21 Plaintiff analyzed the data and extrapolated his analysis to cover the entire putative
22 Class Period. (*Id.* at ¶23.)

23
24 **3. Counsel is experienced in similar litigation**

1 Class Counsel represent that are experienced in class action litigation, including
2 wage and hour class actions. (Sani Decl. ¶5; Declaration of Paul K. Haines ¶¶ 6-7.)

3 4 **4. Percentage of the class objecting**

5 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
6 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
7 the court receive objections to the proposed settlement, it will consider and either sustain
8 or overrule them at the fairness hearing.”].

9 10 11 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 12 **FAIR, ADEQUATE, AND REASONABLE**

13
14 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
15 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
16 does when it approves a settlement as in good faith under Code of Civil Procedure
17 section 877.6, the court must at least satisfy itself that the class settlement is within the
18 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
19 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
20 consider and weigh the nature of the claim, the possible defenses, the situation of the
21 parties, and *the exercise of business judgment* in determining whether the proposed
22 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation*, *supra*, 495 F.2d at p.
23 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

24 25 **1. Amount Offered in Settlement**

1 The most important factor is the strength of the case for plaintiffs on the merits,
2 balanced against the amount offered in settlement.” (*Id.* at 130.)

3 Class Counsel estimated Defendant’s maximum exposure at \$2,571,537.42 and
4 realistic exposure at \$396,152.02, based on the following analysis:

5 Violation	Maximum Exposure	Realistic Exposure
6 Meal Period Violations	\$613,371.22	\$122,674.24
7 Rest Period Violations	\$349,360.20	\$43,670.03
8 Wage Statement Violations	\$428,750.00	\$53,593.75
9 Waiting Time Penalties	\$359,856.00	\$44,982.00
10 PAGA Penalties	\$820,200.00	\$131,232.00
11 Total	\$2,571,537.42	\$396,152.02

12 (Sani Decl. ¶¶ 12-21.)

13 Class Counsel obtained a gross settlement valued at \$350,000. This is 13.6% of
14 Defendant’s maximum exposure and 88.3% of Defendant’s realistic exposure.

15 **2. The Risks of Future Litigation**

17 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
18 motion practice and appeals) are also likely to prolong the litigation as well as any
19 recovery by the class members. Even if a class is certified, there is always a risk of
20 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
21 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
22 conducting class actions, which means, under suitable circumstances, entertaining
23 successive motions on certification if the court subsequently discovers that the propriety
24 of a class action is not appropriate.”].) Further, the settlement was negotiated and
25 endorsed by Class Counsel who, as indicated above, are experienced in class action

1 litigation. Based upon their investigation and analysis, the attorneys representing
2 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
3 adequate. (Sani Decl ¶27.)

4 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
5 which has been served with a copy of the Settlement Agreement and has not yet objected.
6 (Sani Decl., Exhibit C.) Any objection by it will be considered at the final fairness
7 hearing.

8 **3. The Releases Are Limited**

9
10 The Court has reviewed the Releases to be given by the absent class members and
11 the named plaintiffs. The releases, described above, are tailored to the pleadings and
12 release only those claims in the pleadings. There is no general release by the absent
13 class. The named plaintiff's general release is appropriate given that he was represented
14 by counsel in its negotiation.

15 **4. Conclusion**

16
17 Class Counsel estimated Defendant's maximum exposure at \$2,571,537.42 and
18 realistic exposure at \$396,152.02. Class Counsel obtained a gross settlement valued at
19 \$350,000. This is 13.6% of Defendant's maximum exposure and 88.3% of Defendant's
20 realistic exposure, which, given the uncertain outcomes, including the potential that the
21 class might not be certified, that liability is a contested issue, and that the full amount of
22 penalties would not necessarily be assessed even if the class is certified and liability
23 found, the settlement is within the "ballpark of reasonableness."

24 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

25

1 A detailed analysis of the elements required for class certification is not required,
2 but it is advisable to review each element when a class is being conditionally certified.
3 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
4 advocating class treatment must demonstrate the existence of an ascertainable and
5 sufficiently numerous class, a well-defined community of interest, and substantial
6 benefits from certification that render proceeding as a class superior to the alternatives.”
7 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

8 **1. The Proposed Class is Numerous**

9 There are 318 putative Class Members. (Motion ISO Prelim at 17:20-24.)
10 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
11 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
12 *parties to a class action is liberally construed,*” and citing examples wherein classes of
13 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
14 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

15 **2. The Proposed Class Is Ascertainable**

16 “A class is ascertainable, as would support certification under statute
17 governing class actions generally, when it is defined in terms of objective
18 characteristics and common transactional facts that make the ultimate identification
19 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
20 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

21 The class is defined above. Class Members are ascertainable through
22 Defendant’s employment records. (Motion ISO Prelim at 17:20.)

23 **3. There Is A Community of Interest**

24 “The community of interest requirement involves three factors: ‘(1) predominant
25 common questions of law or fact; (2) class representatives with claims or defenses typical

1 of the class; and (3) class representatives who can adequately represent the class.”

2 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 As to commonality, Plaintiff asserts that his claims are predicated on Defendant’s
4 allegedly unlawful meal and rest period practices. (Motion ISO Prelim at 17:28-18:3.)

5 The named plaintiff has claims typical of the class because Plaintiff alleges he was
6 employed by Defendant as a non-exempt employee in California during the proposed
7 Class Period and was subject to Defendant’s wage and hour policies at issue in this
8 lawsuit. Plaintiff also alleges that he was injured by the same challenged policies that
9 injured the Settlement Class as a whole, including allegedly working shifts in excess of
10 5.0 hours without a timely first meal period, working shifts in excess of 10.0 hours
11 without a second meal period, not receiving an off-duty first, second, or third rest period,
12 and receiving inaccurate and incomplete itemized wage statements and not receiving all
13 wages due at the end of employment as a result. (Motion ISO Prelim at 18:8-16.)

14 There appear to be no conflicts of interest between the named plaintiff and the
15 class. (Motion ISO Prelim at 18:19-23.) Plaintiff represents that he understands the
16 potential benefit to the class by servicing as class representative and has been actively
17 involved in the case from its inception. (Declaration of Fernando Barrera ¶¶ 3-4.)

18 As previously stated, Class Counsel have experience in class action litigation.

19
20 **4. Substantial Benefits Exist**

21 Given the relatively small size of the individual claims, a class action is superior to
22 separate actions by the class members.

23
24 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
25 OF DUE PROCESS**

1 The purpose of notice is to provide due process to absent class members. A practical
2 approach is required, in which the circumstances of the case determine what forms of
3 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
4 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
5 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
6 stake of the individual class members; (4) the cost of notifying class members; (5) the
7 resources of the parties; (6) the possible prejudice to class members who do not receive
8 notice; and (7) the res judicata effect on class members.

9 **1. Method of class notice**

10 No later than twenty-one (21) calendar days following preliminary approval of
11 this Settlement by the Court, Defendant shall provide the Settlement Administrator with
12 data that is within Defendant's possession containing, for each Class Member: (a) the
13 Class Member's name; (b) the Class Member's last known address; (c) the Class
14 Member's social security number; and (d) the total number of "qualified weeks" during
15 which the Class Member was employed by Defendant in California during the Class
16 Period as a non-exempt employee. This Class information is confidential and not to be
17 disclosed to anyone other than the Settlement Administrator. (¶25)

18 Within seven (7) calendar days of receipt of the database containing the
19 information to be provided by Defendant pursuant to Paragraph 25, the Settlement
20 Administrator shall (i) run the names of all Class Members through the National
21 Change of Address ("NCOA") database to determine any updated addresses for Class
22 Members, (ii) update the addresses of any Class Member for whom an updated address
23 was found through the NCOA search, and (iii) mail a copy of the Notice and Spanish-
24 translated Notice to all Class Members by first class regular U.S. Mail, using the most
25 current mailing address information provided by Defendant or at the updated address

1 found through the NCOA search, and retain proof of mailing. The Settlement
2 Administrator will engage in address searches consistent with its normal practices in
3 administering settlements of wage claims, including skip tracing. Such search efforts
4 shall include, where necessary, using social security numbers to obtain better address
5 information and attempting to call such Class Members. Any returned envelopes from
6 this mailing with forwarding addresses will be utilized by the Settlement Administrator
7 to forward the Notices to the Class Members. (¶20.b)

8 Notices returned to the Settlement Administrator as non-delivered shall be re-
9 sent to the forwarding address, if any, on the returned envelope. A returned Notice will
10 be forwarded only once per Class Member by the Settlement Administrator. Upon
11 completion of these steps by the Settlement Administrator, the Parties shall be deemed
12 to have satisfied their obligation to provide the Notice to the affected Class Member.
13 The affected Class Member shall remain a Class Member and shall be bound by all the
14 terms of this Stipulation and the Court's Final Order and Judgment. (¶20.c) A process
15 for remailing returned notice is set forth in ¶ 10, 20.d.

16 **2. Content of class notice.**

17 A copy of the proposed class notice is attached to the Settlement Agreement as
18 Exhibit A. The notice includes information such as: a summary of the litigation; the
19 nature of the settlement; the terms of the settlement agreement; the maximum
20 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
21 the enhancement award, and claims administration costs); the procedures and deadlines
22 for participating in, opting out of, or objecting to, the settlement; the consequences of
23 participating in, opting out of, or objecting to, the settlement; and the date, time, and
24 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
25 given in both English and Spanish. (¶20)

1 **3. Settlement Administration Costs**

2 Settlement administration costs are estimated at **\$12,000**, including the cost of
3 notice (§18.d). Prior to the time of the final fairness hearing, the settlement
4 administrator must submit a declaration attesting to the total costs incurred and
5 anticipated to be incurred to finalize the settlement for approval by the Court.
6

7 **E. ATTORNEY FEES AND COSTS**

8 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
9 implied, that has been entered into with respect to the payment of attorney fees or the
10 submission of an application for the approval of attorney fees must be set forth in full in
11 any application for approval of the dismissal or settlement of an action that has been
12 certified as a class action.”

13 Ultimately, the award of attorney fees is made by the court at the fairness
14 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
15 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
16 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
17 1132-1136. In common fund cases, the court may use the percentage method. If
18 sufficient information is provided a cross-check against the lodestar may be conducted.
19 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
20 agreement by the parties to the contrary, “the court ha[s] an independent right and
21 responsibility to review the attorney fee provision of the settlement agreement and
22 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
23 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

24 The question of class counsel’s entitlement to **\$116,666.67** (33 1/3%) in attorney
25 fees will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
2 the court with current market tested hourly rate information and billing information so
3 that it can properly apply the lodestar method and must indicate what multiplier (if
4 applicable) is being sought.

5 Fee Split: Plaintiff Barrera has approved of the following attorneys' fee-split in
6 this case: (1) sixty percent (60%) of attorneys' fees collected to be distributed to Sani
7 Law, APC, and (2) forty percent (40%) of attorneys' fees collected to be distributed to
8 Haines Law Group, APC. (Barrera Decl. ¶7.)

9 Class counsel should also be prepared to justify the costs sought (capped at
10 **\$20,000**) by detailing how they were incurred.

11
12 **F. SERVICE AWARDS**

13 The Settlement Agreement provides for a service award of up to **\$7,500** for the
14 class representative. Trial courts should not sanction enhancement awards of thousands
15 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
16 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
17 quantification of time and effort expended on the litigation, and in the form of reasoned
18 explanation of financial or other risks incurred by the named plaintiffs, is required in
19 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
20 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
21 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

22 In connection with the final fairness hearing, the named Plaintiffs must submit a
23 declaration attesting to why they should be compensated for the expense or risk they
24 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

1 The Court will decide the issue of the enhancement award at the time of final
2 approval.

3
4 **V. CONCLUSION AND ORDER**

5 The Court hereby:

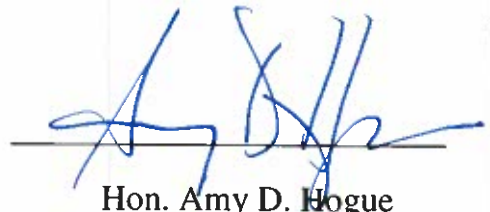
- 6 (1) Grants preliminary approval of the settlement as fair, adequate, and
7 reasonable;
- 8 (2) Grants conditional class certification;
- 9 (3) Appoints Fernando Barrera as Class Representative;
- 10 (4) Appoints Sani Law, APC and Haines Law Group, APC as Class Counsel;
- 11 (5) Appoints CPT Group as Settlement Administrator;
- 12 (6) Approves the proposed notice plan; and
- 13 (7) Approves the proposed schedule of settlement proceedings as follows:

- 14 • Preliminary approval hearing: February 9, 2021
- 15 • Deadline for Defendant to provide class list to settlement administrator: ~~March~~ 3/12/21
16 2, 2021 (within 21 calendar days of preliminary approval)
- 17 • Deadline for settlement administrator to mail notices: ~~March 9~~ 3/19, 2021 (within 28
18 calendar days from preliminary approval)
- 19 • Deadline for class members to opt out: ~~April 23~~ 5/3, 2021 (45 calendar days from
20 the initial mailing of the Notice Packets)
- 21 • Deadline for class members to object: ~~April 23~~ 5/3, 2021 (45 calendar days from the
22 initial mailing of the Notice Packets)
- 23 • Deadline for class counsel to file motion for final approval is 16 court days prior
24 to final fairness hearing.
- 25 • Final fairness hearing: 6/1, 2021, at 10:00 a.m.

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~~Any failure to fully and timely comply with the contingencies may result in the
revocation of this Order in its entirety.~~

Dated: 2/19/2021



Hon. Amy D. Hogue
Judge of the Superior Court