

**RULING RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Delgado, et al v. AKUA Behavioral Health, Inc.

**Case No.: 22STCV13591**

**Department SSC-9**

**Hon. Elaine Lu**

Hearing: May 28, 2025 c.f March 20, 2025

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- The Gross Settlement Amount ("GSA") is **\$900,000**, non-reversionary. (¶4.1)
- The Net Settlement Amount ("Net") (**\$495,000**) is the GSA minus the following:
  - Up to **\$315,000 (35%)** for attorney fees (¶4.2.2)
  - Up to **\$30,000** for litigation costs (¶4.2.2);
  - Up to **\$7,500** for Service Payments to the Named Plaintiffs (\$5,00 to Plaintiff Richard Silva and \$2,500 to Plaintiff Alicia Delgado) (¶4.2.1);
  - Up to **\$15,000** for settlement administration costs (¶4.2.3);
  - Payment of **\$37,500** (75% of \$50,000 PAGA penalty) to the LWDA. (¶4.2.5)
- Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.
- Plaintiffs shall release Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **September 15, 2025**, and will be heard on **October 22, 2025, 10:00 a.m., in Department 9**. *Failure to file the Parties' Motion for Final Approval of Class Action Settlement by this deadline will result in a continuance of the final approval hearing to the Court's first available hearing date, which could be months after the hearing date noted here.* Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged **single document** that constitutes a [Proposed] Order and Judgment

containing among other things, the class definition, full release language, and names of the any class members who opted out.

**Non-Appearance Case Review Re: Filing and Serving of Motion for Final Approval of Class Action Settlement is set for September 22, 2025, 8:30 a.m., Department 9.**

**BACKGROUND**

This is a wage and hour class action. On April 25, 2022, Ms. Delgado filed a putative class action complaint against Defendant entitled *Alicia Delgado v. Akua Behavioral Health, Inc.* (Los Angeles County Superior Court Case No. 22STCV13591, hereinafter “Delgado Action”), which alleged the following causes of action: (1) Failure to Pay All Wages Due in Violation of Cal. Labor Code §§ 204, 510, 1194 & 1198; (2) Meal Period Violations (Cal. Lab. Code §§ 512, 226.7); (3) Rest Period Violations (Cal. Lab. Code § 226.7); (4) Failure to Reimburse for Business Expenses (Cal. Labor Code § 2802); (5) Failure to Provide Accurate Itemized Statements in Violation of Cal. Labor Code §§ 226(a)-(g); (6) Waiting Time Penalties (Cal. Lab. Code §§ 201-203); and (7) Unfair Competition.

On October 31, 2022, Ms. Delgado filed a Second Amended Complaint in the Delgado Action adding an additional cause of action under PAGA.

On December 21, 2022, Defendant filed a motion to compel arbitration of Ms. Delgado’s individual PAGA claims and dismiss the representative PAGA claim and potential class claims.

On April 6, 2023, 2023, the Honorable Yvette M. Palazuelos entered an order compelling Ms. Delgado’s individual PAGA claims to arbitration, and stayed the representative PAGA claim and potential class claims pending the completion of arbitration.

On May 3, 2023, Ms. Delgado initiated arbitration of her individual Labor Code and PAGA claims with JAMs. The Honorable Kirk H. Nakamura (Ret.) was designated as the arbitrator.

On July 27, 2022, after fully exhausting PAGA’s 65-day notice period, Mr. Silva filed a civil complaint against Defendant entitled *Richard Silva v. Akua Behavioral Health, Inc.* (Orange County Superior Court Case 30-2022-01272105, hereinafter “Silva Action”), which alleged a single cause of action under the PAGA predicated on the following Labor Code violations: (1) Failure to Pay Overtime (Cal. Labor Code §§ 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Labor Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Labor Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Labor Code § 1194, 1197, and 1197.1); (5) Failure to Timely Pay Wages Upon Termination (Cal. Labor Code §§ 201 and 202); (6) Failure to Timely Pay Wages During Employment (Cal. Labor Code § 204); (7) Failure to Provide Complete and Accurate Wage Statements (Cal. Labor Code § 226(a)); (8) Failure to Keep Complete and

Accurate Payroll Records (Cal. Labor Code § 1174); and (9) Failure to Reimburse Necessary Business-Related Expenses (Cal. Labor Code §§ 2800 and 2802).

On September 16, 2022, Defendant filed a motion to compel arbitration of Mr. Silva's individual PAGA claims and dismiss the representative PAGA claims.

On January 23, 2023, the Honorable Lon Hurwitz entered an order compelling Mr. Silva's individual PAGA claims to arbitration, and stayed Mr. Silva's representative PAGA claim pending completion of arbitration.

On March 31, 2023, Mr. Silva initiated arbitration of his individual Labor Code and PAGA claims with JAMS. The Honorable Linda Miller (Ret.) was designated as the arbitrator.

On September 11, 2024, counsel filed a Third Amended Complaint ("TAC") in the Delgado Action adding Mr. Silva as an additional named plaintiff and to add allegations regarding misclassification and alleged violations of Labor Code §§ 1197, 1197.2, and 2800.

Prior to mediation, Defendant provided Plaintiffs' Counsel with informal discovery, which included: 1) all versions of Defendant's employee handbooks in use during the Class Period and other documents evidencing its relevant wage and hour policies and procedures; 2) key data points regarding the size and composition of the Class, such as the number of Class Members and Aggrieved Employees (including the number of current versus former employees), the total number pay periods worked by Class Members, and the average rates of pay for the Class; and 3) 25% sampling of Class Members' time and payroll records, which was randomly selected and included employees across the Class Period. It is further represented that Plaintiff's Counsel consulted with an expert to analyze Class Members' time and payroll records.

On April 16, 2024, the Parties attended a formal mediation with Lynn Frank, Esq., and were able to come to an agreement via a Mediator's Proposal. A fully executed long form Settlement Agreement was filed with the Court on October 9, 2024 attached to the Declaration of S. Emi Minne ("Minne Decl.") as Exhibit 1.

On March 20, 2025, the court continued preliminary approval for the parties to address defects in the motion. In response, on May 13, 2025, counsel filed a fully executed Amended Settlement Agreement attached to the Second Supplemental Declaration of S. Emi Minne ("Minne Supp. Decl.") as Exhibit 2.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement.

#### **SETTLEMENT CLASS DEFINITION**

- "Class" means all current and former non-exempt employees of Defendant that were employed in the state of California at any time during the Class Period. (Settlement Agreement, ¶1.5.)

- "Class Period" means the period commencing on April 22, 2021, and ending on June 15, 2024. (¶1.12)
- "Aggrieved Employees" means all current and former non-exempt employees of Defendant employed by Defendant in the State of California at any time during the PAGA Period. (¶1.4)
  - "PAGA Period" means the period commencing on April 22, 2021, and ending on June 15, 2024. (¶1.32)
- Based on a review of its records to date, Defendant represents that there are approximately 541 Class Members who collectively worked a total of 20,000 Workweeks between April 22, 2021 and April 16, 2024. The total Class Members and Workweeks are expected to be proportionately higher due to the dates of the actual Class Period. (¶5.1)
- The parties agree to class certification for the purposes of settlement. (¶13.1)

### **TERMS OF SETTLEMENT AGREEMENT**

The essential terms are as follows:

- The Gross Settlement Amount ("GSA") is **\$900,000**, non-reversionary. (¶4.1)
  - Based on its records, Defendant estimated that, between April 22, 2021 and April 16, 2024, there were 541 Class Members who worked a total of 20,000 Workweeks ("Certified Workweek Count"). Should the qualifying Workweeks worked by the Class Members during this period (i.e., April 22, 2021 to April 16, 2024) ultimately increase by more than 10% of the Certified Workweek Count (i.e., by more than 2,000 Workweeks), Defendant shall increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10% of the Certified Workweek Count (e.g., if the number of Workweeks increases by 11 % to 22,000 Workweeks, the Gross Settlement Amount will increase by 1 % to \$909,000.00). (¶9)
- The Net Settlement Amount ("Net") (**\$495,000**) is the GSA minus the following:
  - Up to **\$315,000 (35%)** for attorney fees (¶4.2.2)
    - **Fee Split:** 40% to Parker & Minne, LLP, 40% to Lawyers for Justice, PC, and 20% to Law Office of Donald Potter (Minne Decl., ¶75.)
  - Up to **\$30,000** for litigation costs (¶4.2.2);
  - Up to **\$7,500** for Service Payments to the Named Plaintiffs (\$5,00 to Plaintiff Richard Silva and \$2,500 to Plaintiff Alicia Delgado) (¶4.2.1);
  - Up to **\$15,000** for settlement administration costs (¶4.2.3);
  - Payment of **\$37,500** (75% of \$50,000 PAGA penalty) to the LWDA. (¶4.2.5)
- Defendant will also pay employer-side taxes. (¶4.1)
- Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount and Defendant's share of any employer-side payroll taxes over a series of twenty-four (24) installment payments as follows: (¶5.3)
  - Defendant shall make eight (8) monthly installment payments of \$20,000.00 ("2024 Installments") into an interest-bearing Qualified Settlement Fund ("QSF") established by the Settlement Administrator. The first 2024 Installment shall be

deposited by Defendant into the QSF by no later than May 31, 2024 ( or, if the Settlement Administrator requires additional time to establish the QSF, within three (3) business days following establishment of the QSF). All remaining 2024 Installments shall be deposited by Defendant into the QSF by no later than the last day business day of each subsequent month, with the final 2024 Installment deposited by no later than December 31, 2024. Regardless of when payment commences, Defendant shall deposit a total of \$160,000.00 into the QSF by no later than December 31, 2024. (¶5.3.1);

- Commencing in 2025, Defendant shall make sixteen (16) monthly installment payments of \$46,250.00 ("2025-2026 Installments") into the QSF. The first 2025-2026 Installment shall be deposited by Defendant into the QSF by no later than January 31, 2025. All remaining 2025-2026 Installments shall be deposited by Defendant into the QSF by no later than the last day business day of each subsequent month, with the final 2025-2026 Installment, plus any amounts owed by Defendant for employer-side payroll taxes, deposited by Defendant into the QSF by no later than June 30, 2026. (¶5.3.2);
- Any interest earned on the 2024 Installments and 2025-2026 Installments prior to disbursement of the Gross Settlement Amount (less any applicable fees and charges associated with the establishment and maintenance of the QSF) shall be used to pay Defendant's share of employer-side payroll taxes. If any additional interest remains following payment of employer-side payroll taxes, such amounts shall be credited towards the Gross Settlement Amount. Defendant may, in its sole discretion, prepay any amounts it chooses into the QSF without penalty. (¶5.3.3)
  - Defendant has provided a declaration evidencing the need for a payment plan. (Declaration of Kenny Dewan, *passim*.)
- Disbursement of GSA: Within fourteen (14) days after Defendant fully funds the Gross Settlement Amount and all applicable employer-side payroll taxes, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶5.5)
- There is no claim form requirement. (¶4.1)
- Participating Class Member Payment: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (¶4.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶4.2.4.2)
  - Tax Allocation: 20% as wages; 80% as interest and penalties. (¶4.2.4.1)

- PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., \$12,500.00) by the total number of Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Workweeks worked by each individual Aggrieved Employee during the PAGA Period. (§4.2.5.1)
  - Tax Allocation: 100% penalties. (§4.2.5.2)
- "Response Deadline" means the date that is sixty (60) calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may mail, fax, or email Requests for Exclusion, written Objections to the Settlement, or Workweek challenges to the Administrator. The Response Deadline for Requests for Exclusion, Objections, and Workweek challenges will be extended fourteen (14) calendar days for any Class Member whose Class Notice is remailed by Administrator, unless the 14th day after remailing falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defense Counsel. (§1.41) The same deadlines apply to workweek challenges. (§8.6)
  - If the number of valid Requests for Exclusion exceeds 5% of the total of all Class Members, Defendant may elect to withdraw from the Agreement. T. (§10)
- Uncashed Settlement Checks: The Administrator will cancel all checks not cashed by the void date (180 days after the date of mailing). (§5.4.1) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (§5.4.3)
- The settlement administrator will be Apex Class Action LLC. (§1.2)
- Counsel has submitted the proposed settlement agreement to the LWDA on October 9, 2024. (Exhibit 10 to Minne Decl.)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

### **ANALYSIS OF SETTLEMENT AGREEMENT**

#### **A. Does a presumption of fairness exist?**

1. Was the settlement reached through arm's-length bargaining? Yes. On April 16, 2024, the Parties attended a formal mediation with Lynn Frank, Esq., and were able to come to an agreement via a Mediator's Proposal. (Minne Decl., §20.)
2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Prior to mediation, Defendant provided Plaintiffs' Counsel with informal discovery, which included: 1) all versions of Defendant's employee handbooks in use during the Class Period and other documents evidencing its relevant wage and hour policies and procedures; 2) key data points regarding the size and composition of the Class, such as the number of Class Members and Aggrieved Employees (including the number of current

versus former employees), the total number pay periods worked by Class Members, and the average rates of pay for the Class; and 3) 25% sampling of Class Members' time and payroll records, which was randomly selected and included employees across the Class Period. (*Id.* at ¶18.) It is further represented that Plaintiff's Counsel consulted with an expert to analyze Class Members' time and payroll records. (*Id.* at ¶19.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class action cases. (*Id.* at ¶¶65-71; Declaration of Elizabeth Parker-Fawley, ¶¶2-6, Declaration of Donald Potter, ¶¶18-29.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

CONCLUSION: The settlement is entitled to a presumption of fairness.

**B. Is the settlement fair, adequate, and reasonable?**

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

Counsel has provided the following exposure analysis in this matter:

| CLAIM           | MAX EXPOSURE           | REDUCED EXPOSURE      |
|-----------------|------------------------|-----------------------|
| Unpaid Wages    | \$604,600.00           | \$27,207.00           |
| Rest Breaks     | \$886,600.00           | \$39,897.00           |
| Meal Breaks     | \$735,878.00           | \$128,778.65          |
| Reimbursements  | \$200,000              | \$35,000.00           |
| Wage Statements | \$906,750.00           | \$113,343.75          |
| Labor Code §203 | \$1,911,429.00         | \$238,928.63          |
| PAGA            | \$5,115,054.40         | \$500,000.00          |
| <b>TOTAL</b>    | <b>\$10,360,311.40</b> | <b>\$1,083,155.03</b> |

(Minne Decl., ¶¶39-62.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

4. Amount offered in settlement. Plaintiff's counsel obtained a Gross Settlement Amount of \$900,000, which is approximately 9% of the maximum exposure, which is within the ballpark of reasonableness.

The \$900,000 settlement amount, after reduction by the requested deductions, leaves \$495,000 to be divided among approximately 541 employees. The resulting payments will average \$1,478.44. ( $\$495,000/541 = \$1,478.44$ )

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the final fairness hearing.

CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and reasonable."

### **C. Scope of the release**

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and all employer-side payroll taxes, Plaintiffs, Class Members, Aggrieved Employees, and the State of California will release claims against all Released Parties as follows: (¶16)

- Plaintiffs and all Participating Class Members shall release Released Parties from all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the operative complaint in the Actions including the following claims: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (8) Misclassification of Status; and (9) claims for unfair or unlawful business practices under California Business & Professions Code sections 17200, et seq. which are predicated on violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. This release is limited to claims arising during the Class Period. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims against Released Parties, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment



insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (§6.2)

- Plaintiffs, Aggrieved Employees, and the LWDA shall release Released Parties from any and all claims for the recovery for civil penalties, attorneys' fees and costs permissible under PAGA which Plaintiffs and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the operative complaints in the Actions and/or the PAGA Notices, including failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed at discharge or resignation; failure to timely pay wages during employment; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business-related expenses; misclassification of status; and violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802. This release is limited to claims arising during the PAGA Period. (§6.3)
- The named Plaintiff will also provide a general release and 1542 waiver. (§6.1.)

**D. May conditional class certification be granted?**

**1. Standards**

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

**2. Analysis**

a. Numerosity. There are approximately 541 class members. (Settlement Agreement, §5.1.) This element is met.

b. Ascertainability. The proposed class is defined above. The class definition is “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) The class members are identifiable from Defendant’s records. (MPA, 20:13-15.)

c. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Here, Counsel contends that commonality is met because Plaintiffs’ claims present sufficient common issues of law and fact because Plaintiffs allege that Defendant prohibited employees from taking compliant meal and rest periods, required Class Members to

perform work off-the-clock, misclassified Class Members, and required Class Members to pay for work-related expenses out of pocket. Plaintiffs allege that Defendant's policies and practices were uniform as to all Class Members. (MPA, 21:1-8.)

Further, Counsel contends that Plaintiffs' wage and hour claims are typical of the proposed Class because: 1) Plaintiffs allege that their claims are based on the same legal theories, arise out of the same unlawful policies and practices, and seek the same relief as other Class Members; and 2) Plaintiffs' claims are based on the same alleged conduct and business practices as the claims of the other Class Members. (MPA, 21:17-20.)

Finally, counsel contends that adequacy is met because Plaintiffs are represented by adequate counsel and there is no antagonism between them and the class.. (MPA, 21:24-22:5; Declaration of Plaintiff Delgado, *passim*; Declaration of Plaintiff Silva, *passim*.)

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions. (Minne Decl., ¶¶34-39.)

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class may be conditionally certified since the prerequisites of class certification have been satisfied.

**E. Is the notice proper?**

a. Content of class notice. The proposed notice is attached to the Amended Settlement Agreement as Exhibit A. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

b. Method of class notice. Notice will be via direct mail. Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (¶5.2) Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice in both English and Spanish. Before mailing Class Notices, the Administrator will update Class Member addresses using the National Change of Address database. (¶8.4.2) Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (¶8.4.3) If the Administrator, Defendant, Defense Counsel, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and

should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later. (¶8.4.5) Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶8.8.1)

c. Cost of class notice. As indicated above, settlement administration costs are estimated to be **\$15,000**. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

#### **F. Attorney fees and costs**

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

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **\$315,000 (35%)** in attorney fees and up to **\$30,000** in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

#### **G. Incentive Awards to Class Representatives**

The named Plaintiffs will request service awards of up to **\$7,500** (\$5,000 to Plaintiff Richard Silva and \$2,500 to Plaintiff Alicia Delgado). In connection with the final fairness hearing, each named Plaintiff must submit a declaration attesting to why (s)he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why (s)he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort

expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiff, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . . .’” (*Id.* at 806-807, italics and ellipsis in original.) The Court will decide the issue of the enhancement awards at the time of final approval.

### **CONCLUSION AND ORDER**

The Parties’ Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- The Gross Settlement Amount (“GSA”) is **\$900,000**, non-reversionary. (¶4.1)
- The Net Settlement Amount (“Net”) (**\$495,000**) is the GSA minus the following:
  - Up to **\$315,000 (35%)** for attorney fees (¶4.2.2)
  - Up to **\$30,000** for litigation costs (¶4.2.2);
  - Up to **\$7,500** for Service Payments to the Named Plaintiffs (\$5,00 to Plaintiff Richard Silva and \$2,500 to Plaintiff Alicia Delgado) (¶4.2.1);
  - Up to **\$15,000** for settlement administration costs (¶4.2.3);
  - Payment of **\$37,500** (75% of \$50,000 PAGA penalty) to the LWDA. (¶4.2.5)
- Employer’s share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.
- Plaintiffs shall release Defendants from claims described herein.

The Parties’ Motion for Final Approval of Class Action Settlement must be filed by **September 15, 2025**, and will be heard on **October 22, 2025, 10:00 a.m., in Department 9**. *Failure to file the Parties’ Motion for Final Approval of Class Action Settlement by this deadline will result in a continuance of the final approval hearing to the Court’s first available hearing date, which could be months after the hearing date noted here.* Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

The Parties’ Motion for Final Approval of Class Action Settlement must include a concurrently lodged **single document** that constitutes a [Proposed] Order and Judgment

containing among other things, the class definition, full release language, and names of the any class members who opted out.

**Non-Appearence Case Review Re: Filing and Serving of Motion for Final Approval of Class Action Settlement is set for September 22, 2025, 8:30 a.m., Department 9.**

THE PLAINTIFF IS ORDERED TO DOWNLOAD THE INSTANT **SIGNED** ORDER FROM THE COURT'S WEBSITE AND TO GIVE NOTICE TO ALL OTHER PARTIES AND TO FILE PROOF OF SERVICE OF SUCH WITHIN 10 DAYS.

IT IS SO ORDERED.

DATED: May 28, 2025



A handwritten signature in cursive script, reading "Elaine Lu", is written over a horizontal line.

ELAINE LU

Judge of the Superior Court  
Elaine Lu / Judge