

**FILED**  
LOS ANGELES SUPERIOR COURT

JUN 10 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
BY Nancy Navarro Deputy  
NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

ROSA ANGUIANO, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

AVENT GROUP, INC., a corporation;  
TIGERS (USA) GLOBAL LOGISTICS,  
INC., a corporation; and DOES 1 through  
50, inclusive,

Defendants.

Case No.: 19STCV35203

ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

**I. BACKGROUND**

Plaintiff Rosa Anguiano sues her former employer, Defendants Avent Group, Inc. ("Avent") and Tigers (USA) Global Logistics, Inc. ("Tigers") (collectively, Defendants"), for alleged wage and hour violations. Defendant Avent was a staffing services company that provided on-site non-exempt, hourly employees to Tigers.

1 Defendant Tigers provides logistics and freight forwarding services throughout  
2 California. Plaintiff seeks to represent a class of Defendants' current and former non-  
3 exempt employees.

4 On October 3, 2019, Plaintiff filed her class action complaint alleging causes of  
5 action for: (1) failure to provide required meal periods (Labor Code §§ 226.7, 510, 512,  
6 1194, 1197); (2) failure to provide required rest breaks (Labor Code §§ 226.7, 512; (3)  
7 failure to pay overtime wages (Labor Code §§ 510, 1194, 1198); (4) failure to pay  
8 minimum wages (Labor Code §§ 1194, 1197); (5) failure to pay all wages due to  
9 discharged and quitting employees (Labor Code §§ 201, 202, 203); (6) failure to pay  
10 timely wages (Labor Code §§ 204, 210); (7) failure to maintain required records (Labor  
11 Code §§ 226, 1174); (8) failure to furnish accurate itemized statements (Labor Code §  
12 226); (9) unfair and unlawful business practices (Bus. & Prof. Code §§ 17200, et seq.);  
13 and (10) penalties under the California Private Attorneys General Act (Labor Code §§  
14 2698-2699.5) ("PAGA").

15 A default was entered against Defendant Avent on July 17, 2020.

16 On March 9, 2021, the parties, except for Defendant Avent, participated in a  
17 mediation session with mediator Steven J. Serratore. The parties reached a settlement  
18 at the conclusion of the mediation, and the terms were finalized in the *Class Action*  
19 *Settlement Agreement and Release* ("Settlement Agreement"), a copy of which was  
20 filed with the Court.

21 On December 7, 2021, the Court issued a checklist regarding Plaintiff's motion  
22 for preliminary approval of the settlement. The motion was called for hearing on  
23 December 8, 2021. At the hearing, the Court and counsel discussed the deficiencies in  
24 Plaintiff's motion, and the Court subsequently continued the hearing for additional  
25 briefing.

1 After the hearing, the parties entered into an *Amended Settlement Agreement*  
2 (“Amended Settlement Agreement”), a copy of which is attached as Exhibit C to the  
3 Supplemental Declaration of Scott E. Wheeler (“Wheeler Supp. Decl.”).

4 On May 31, 2022 a further checklist was issued. On June 2, 2022 A further  
5 Declaration of Plaintiff’s Counsel, Aubry Wand, was filed, together with a stipulation  
6 re: renewed motion for preliminary approval.

7 The matter came on for hearing on June 8, 2022.

8 For the reasons set forth below, the Court preliminarily grants approval for the  
9 settlement.

## 10 11 **II. THE TERMS OF THE SETTLEMENT**

### 12 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

13 “Class” means: all non-exempt employees of Avent Group, Inc. who were  
14 assigned to work for Tigers (USA) Global Logistics, Inc. at any California location  
15 during the Class Period. (¶3) “Class Period” means the time period from October 3,  
16 2015 up to and including March 15, 2021. (¶8)

17 “Class Members” mean each person who is a member of the Class defined in  
18 Paragraph 3 above. (¶7)

19 “Participating Class Member” or “Participating Class Members” means any  
20 Class Member that submits a timely and valid Claim Form, does not opt-out, and that is  
21 eligible to receive an Individual Settlement Payment. (¶31)

22 “PAGA Employee” or “PAGA Employees” means all non-exempt employees of Avent  
23 Group, Inc. who were assigned to work for Tigers (USA) Global Logistics, Inc. at any  
24  
25

1 California location during PAGA Period. (¶28) "PAGA Period" means the time period from  
2 August 30, 2018 through March 15, 2021. (¶29)

3 "Participating PAGA Employee" or "Participating PAGA Employees" means any  
4 PAGA Employee that submits a timely and valid Claim Form and that is eligible to receive an  
5 Individual PAGA Payment. (¶32)

## 6 7 **B. THE MONETARY TERMS OF SETTLEMENT**

8 The essential monetary terms are as follows:

9 The Gross Settlement Amount ("GSA") is **\$270,000** (¶19). This includes payment  
10 of a PAGA penalty of **\$60,000** to be paid 75% to the LWDA (\$45,000) and 25% to  
11 PAGA Members (\$15,000) (¶20.)

12 Work Week Differential: It is currently estimated that Class Members have  
13 worked 24,552 Compensable Work Weeks. The Settlement Administrator shall provide  
14 Plaintiff with the total number of Class Members, and the total number of Compensable  
15 Work Weeks worked by them, ten (10) calendar days before the date that Plaintiff  
16 informs Defendant and the Settlement Administrator that Plaintiff will file a motion for  
17 preliminary approval. If more than 25,000 Compensable Work Weeks are identified at  
18 that time, the Defendant can elect to (1) increase the Gross Settlement Amount on a pro  
19 rata basis according to the number of additional Compensable Work Weeks identified  
20 (i.e., all Compensable Work Weeks beyond 25,000), or (2) elect to void and nullify the  
21 Settlement, in which case, the Parties and litigation will be returned, without prejudice, to  
22 the point and status immediately prior to the execution of this Settlement Agreement, and  
23 the Parties shall proceed in all respects as if this Agreement had not been executed. The  
24 Parties agree to meet and confer regarding the modification of this Agreement in the  
25 event the Compensable Work Weeks exceed 25,000. (¶69)

1 The Net Settlement Amount (“Net”) (\$105,226) is the GSA less:

- 2 ○ Up to **\$90,000** (33 1/3%) for attorney fees (§67.j);
- 3 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
- 4 ○ Up to **\$5,000** for a service award to the proposed class representative
- 5 (§67.i); and
- 6 ○ Estimated **\$49,734** for settlement administration costs (§67.k).
- 7 • “Employer’s Share of Payroll Taxes” means the dollar amount of Defendant’s
- 8 employer payroll tax obligation on the employee wage portion of the Individual
- 9 Settlement Payments, including but not limited to, customary withholdings for
- 10 federal, state and local taxes, and any similar tax or charge. Defendant shall be
- 11 responsible for paying the Employer’s Share of Payroll Taxes separately from,
- 12 and in addition to, the Gross Settlement Amount, in the event that any portion of
- 13 the Gross Settlement Amount is designated as wages. (§16).
- 14 • Assuming the Court approves all maximum requested deductions, approximately
- 15 \$105,226 will be available for automatic distribution to participating class
- 16 members. Assuming full participation, the average settlement share will be
- 17 approximately \$149.74 ( $\$105,226 \text{ Net} \div 703 \text{ class members} = \$149.74$ ). In
- 18 addition, each PAGA member will receive a portion of the PAGA penalty,
- 19 estimated to be \$45.87 per PAGA member. ( $\$15,000 \text{ 25\% of } \$60,000 \text{ PAGA}$
- 20  $\text{penalty} \div 327 \text{ PAGA members} = \$45.87$ )
- 21 • Claims Process: Class Members and PAGA Employees must submit a Claim
- 22 Form to the Settlement Administrator in order to obtain an Individual Settlement
- 23 Payment and/or an Individual PAGA Payment. The Claim Form may be
- 24 modified as necessary to comply with the provisions of any order by the Court.
- 25 The Claim Form will be provided in English and Spanish. (§2.) A copy of the

1 Claim Form is attached to the Amended Settlement Agreement as Exhibit 1. On  
2 the Claim Form, the Class Member must provide the following:

- 3       ○ The Class Member's name, physical address, email, phone number, and  
4       social security number.
- 5       ○ Proof of employment, which can be paystub(s), W-2 form(s), email  
6       communications, or other documentation.
- 7       ● The settlement is not reversionary (§19).
- 8       ● Individual Settlement Payments to Participating Class Members will be  
9       determined based on the number of Compensable Work Weeks worked by all  
10      Participating Class Members during the Class Period based on information  
11      provided by Defendant to the Settlement Administrator. The workweeks will be  
12      calculated by the Settlement Administrator for each Participating Class Member  
13      based on the Class Information during the Class Period. The respective  
14      Compensable Work Weeks for each Participating Class Member will be divided  
15      by the total Compensable Work Weeks for all Participating Class Members,  
16      resulting the Payment Ratio for each Participating Class Member. Each  
17      Participating Class Member's Payment Ratio will then be multiplied by the Net  
18      Settlement Amount to determine his or her Individual Settlement Payment.  
19      (¶67.a).
- 20      ○ Private Attorneys General Act Allocation: The Parties have agreed to  
21      allocate \$60,000 of the Gross Settlement Amount to Plaintiff's claims  
22      under PAGA. Seventy-five percent (75%) of this amount, or in other  
23      words \$45,000, will be paid out of the Gross Settlement Amount to the  
24      Labor and Workforce Development Agency ("LWDA") of the State of  
25      California. The remaining balance of \$15,000 will be paid to Participating

1           PAGA Employees who were employed by Defendant during the PAGA  
2           Period based on the number of Compensable PAGA Work Weeks they  
3           worked during the PAGA Period divided by the total number of  
4           Compensable PAGA Work Weeks worked by all Participating PAGA  
5           Employees during the PAGA Period. (§67.b).

- 6           ○ PAGA Members cannot opt out of the Released PAGA Claims and will  
7           receive their pro rata portion of the PAGA allocation. (Notice, p. 4.)
- 8           ● Tax Withholdings: Fifty percent (50%) of the Individual Settlement Payment  
9           shall represent payment for interest and fifty percent (50%) shall represent  
10          payment for wages. The wage portion of the Individual Settlement Payment will  
11          be subject to withholding of local, state, and federal taxes. The Settlement  
12          Administrator shall issue all required tax forms to Participating Settlement Class  
13          Members in relation to this payment. (§67.a).
- 14          ● Uncashed Individual Settlement Payment Checks: Individual Settlement  
15          Payment checks that are sent to Participating Class Members shall remain  
16          negotiable for one hundred and eighty (180) days from the postmark date of  
17          issuance. If the check is not cashed, deposited, or otherwise negotiated within the  
18          180-day deadline, the check will be voided, and the funds associated with any  
19          such voided checks shall be paid to the Cy Pres Recipient or the State of  
20          California Controller's Office, Unclaimed Property Division, in the name of the  
21          affected Class Member, whichever is approved by the Court. (§67.d).
- 22          ● Unclaimed Funds from Individual PAGA Payments: Any portion of the \$15,000  
23          that is set aside for Individual PAGA Payments to Participating PAGA  
24          Employees that is not claimed (i.e., funds remaining after all Claim Forms have  
25          been processed) shall be paid to the Cy Pres Recipient or the State of California

1 Controller's Office, Unclaimed Property Division, in the name of the affected  
2 Class Member, whichever is approved by the Court. (§67.e). At hearing the  
3 Court approved Legal Aid at Work as the cy pres recipient.

- 4 • "Cy Pres Recipient" means Legal Aid at Work. Neither the Parties nor their  
5 counsel have any interest in the governance or work of Legal Aid at Work.  
6 (§13).
- 7 • Funding and Distribution: Within thirty (30) calendar days of the Effective Date,  
8 Defendant shall wire transfer the full Gross Settlement Amount to the Settlement  
9 Administrator. (§66) Individual Settlement Payments shall be distributed by the  
10 administrator within fourteen (14) calendar days of receipt of the GSA from  
11 Defendant. (§68)

### 12 13 **C. TERMS OF RELEASES**

- 14 • Release of Claims by Class Members: Class Members release the "Released  
15 Claims by Class Members" as of the date that Defendant fully funds the  
16 Settlement. (§39)
  - 17 ○ "Released Claims by Class Members" means: As of the date that  
18 Defendant Tigers (USA) Global Logistics, Inc. fully funds the Settlement,  
19 Settlement Class Members shall fully and finally release and discharge  
20 Released Parties, from October 3, 2015 through March 15, 2021, from  
21 any and all claims, debts, liabilities, demands, obligations, wages,  
22 penalties, guarantees, costs, expenses, attorneys' fees, damages, or causes  
23 of action contingent or accrued for, that are pleaded, or that could have  
24 been pleaded, based on the facts and claims alleged in the Operative  
25 Complaint, including any claims for: (a) failure to provide required meal



1 periods and related premium pay, California Labor Code §§ 226. 7, 510,  
2 512, 1194 and 1197; (b) failure to provide required rest periods and  
3 related premium pay, California Labor Code §§ 226. 7 and 512; (c) failure  
4 to pay overtime wages (including double overtime), California Labor  
5 Code §§510, 1194 and 1198; (d) failure to pay minimum wages,  
6 California Labor Code §§ 1194 and 1197; (e) failure to pay all wages due  
7 at the time of discharge and quitting employees, California Labor Code  
8 §§ 201, 202 and 203; (f) failure to timely pay wages, California Labor  
9 Code §§ 204 and 210; (g) failure to maintain required records, California  
10 Labor Code §§ 226, 1174; (h) failure to furnish accurate, itemized wage  
11 statements, California Labor Code §§ 226, 1174; (i) violation of the  
12 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et  
13 seq.; (j) and all derivative penalties claims predicated on any of the  
14 violations of the California Labor Code and applicable IWC Wage Order  
15 alleged in the Operative Complaint. This release shall only apply to  
16 claims arising during the Class Period. (¶39)

- 17 • “Released PAGA Claims by PAGA Employees” means all claims for civil  
18 penalties under the PAGA, California Labor Code sections 2698, et seq., that  
19 Plaintiff, on behalf of herself, the State of California, and all PAGA Employees,  
20 alleged or that could have been alleged based on the facts asserted in Plaintiffs’  
21 PAGA Notice to the LWDA on April 3, 2019. This release shall only apply to  
22 PAGA claims arising during the PAGA Period. (¶40)
- 23 • “Released Parties” collectively mean: (i) Defendant Tigers (USA) Global  
24 Logistics, Inc.; (ii) Defendant Tigers (USA) Global Logistics, Inc. 's respective  
25 past, present and future parents, subsidiaries and affiliates, successors and

1 assigns; (iii) Tigers (USA) Global Logistics, Inc. 's past, present and future  
2 shareholders, managers, officers, partners, members, agents, employees,  
3 attorneys, insurers, predecessors, successors and assigns of any of the following:  
4 and (iv) any individual or entity which could be jointly liable with any of the  
5 foregoing. Expressly excluded from the definition of Released Parties is  
6 Defendant Avent Group, Inc. (§41)

- 7 • The named Plaintiff will also provide a general release and a waiver of the  
8 protections of Cal. Civ. Code §1542. (§ 38)
- 9 • The releases are effective as of the date Defendant fully funds the Settlement. (§§  
10 62-64.)

#### 11 12 **D. SETTLEMENT ADMINISTRATION**

- 13 • The proposed Settlement Administrator is Simpluris, Inc. (§46), which has  
14 provided evidence that no counsel are affiliated with it and that it has adequate  
15 procedures in place to safeguard the data and funds to be entrusted to it.  
16 (Declaration of Eric Springer (“Springer Decl.”) §§4-7, Exh. A-B.)
- 17 • Settlement administration costs are estimated to be \$49,734.00 (Lechner Decl.  
18 §18.)
- 19 • Notice: The manner of giving notice is described below.
- 20 • Opt Out/ Opt In/ Objection Dates: “Response Deadline” means ninety (90) days  
21 after the date that the Notice Plan first commences and the date by which Class  
22 Members must submit: (a) submit a Request for Exclusion; (b) submit a Claim  
23 Form; or (c) submit an Objection to the Settlement. It is also the date by which  
24 PAGA Employees must submit a Claim Form. (§43.) The Response Deadline also  
25 applies to the submission of payment disputes. (§65.f.)

- Objections may also be made at the Final Approval hearing without a written objection being submitted. (§27)
- If at least ten percent (10%) of the Class Members request exclusion, then Defendant shall have the option, in its sole discretion, to nullify and rescind the Agreement. (§65.i)
- Notice of Final Judgment will be given to the Class by posting it on the Settlement Website. (Declaration of Amy Lechner “Lechner Decl.” §9.)

### III. SETTLEMENT STANDARDS AND PROCEDURE

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

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement

1 agreement to the extent necessary to reach a reasoned judgment that the agreement is  
2 not the product of fraud or overreaching by, or collusion between, the negotiating  
3 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
4 concerned.”] [internal quotation marks omitted].

5 “The burden is on the proponent of the settlement to show that it is fair and  
6 reasonable. However, “a presumption of fairness exists where: (1) the settlement is  
7 reached through arm's-length bargaining; (2) investigation and discovery are sufficient  
8 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
9 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
10 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 ].

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

1 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
2 245.

3 At the same time, “[a] settlement need not obtain 100 percent of the damages  
4 sought in order to be fair and reasonable. Compromise is inherent and necessary in the  
5 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is  
6 substantially narrower than it would be if the suits were to be successfully litigated,’  
7 this is no bar to a class settlement because ‘the public interest may indeed be served by  
8 a voluntary settlement in which each side gives ground in the interest of avoiding  
9 litigation.’” *Id.* at 250.

#### 10 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

##### 11 **A. THERE IS A PRESUMPTION OF FAIRNESS**

12  
13 The settlement is entitled to a presumption of fairness for the following reasons:

##### 14 **1. The settlement was reached through arm’s-length bargaining**

15  
16 On March 9, 2021, the parties, except for Defendant Avent, participated in a  
17 mediation session with mediator Steven J. Serratore. The parties reached a settlement  
18 at the conclusion of the mediation. (Wheeler Decl. ¶8.)  
19

##### 20 **2. The investigation and discovery were sufficient**

21  
22 Plaintiff’s counsel represents that before the mediation, the parties conducted  
23 formal and informal discovery. Plaintiff propounded Interrogatories, Requests for  
24 Admission and Request for Production of Documents in addition to several informal  
25 requests for information and other documents. Plaintiff’s counsel obtained, among

1 other documents, relevant policy documents from Tigers, and the schedules and time  
2 records for Class Members. The named Plaintiff provided her wage statements for  
3 analysis and review. (Wheeler Supp. Decl. ¶6.) Plaintiff's counsel analyzed the time  
4 records to calculate Defendants' maximum exposure if the case were to proceed  
5 through class certification and trial. (*Id.* at ¶8.)

6 This is sufficient to value the case for settlement purposes.

### 7 8 **3. Counsel is experienced in similar litigation**

9 Class Counsel represent that they are experienced in class action litigation,  
10 including wage and hour class actions. (Wheeler Decl. ¶29; Declaration of Aubry Wand  
11 ¶21.)

### 12 **4. Percentage of the class objecting**

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

## 17 18 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 19 **FAIR, ADEQUATE, AND REASONABLE**

20  
21 Notwithstanding a presumption of fairness, the settlement must be evaluated in its  
22 entirety. The evaluation of any settlement requires factoring unknowns. "As the court  
23 does when it approves a settlement as in good faith under Code of Civil Procedure  
24 section 877.6, the court must at least satisfy itself that the class settlement is within the  
25 'ballpark' of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)

38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and *the exercise of business judgment* in determining whether the proposed settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p. 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

### 1. Amount Offered in Settlement

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

Class Counsel estimated Defendant’s maximum exposure at \$1,836,153, based on the following analysis:

Violation	Maximum Exposure
Meal Period Claim	\$113,945.00
Rest Break Claim	\$121,926.00
Unpaid Overtime Wages	\$64,683.00
Wage Statement Violations	\$300,000.00
Waiting Time Penalties	\$408,153.00
PAGA Penalties	\$1,428,000.00
<b>Total</b>	<b>\$1,836,153.00</b>

(Wheeler Decl. ¶16.; Wheeler Supp. Decl. ¶21.)

Class Counsel obtained a gross settlement valued at \$270,000. This is approximately 14.7% of Defendant’s maximum exposure. This is understood to be the full amount recoverable if class members are successful in certifying a class and proving all aspects of liability.

//

## 2. The Risks of Future Litigation

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. Even if a class is certified, there is always a risk of decertification. *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.”].) Further, the settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and adequate. (Wheeler Decl ¶23.)

The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA, which was sent a copy of the Amended Settlement Agreement on May 5, 2022 and has not yet objected. (Wand Supp. Decl., Exhibit A.) Any objection by it will be considered at the final fairness hearing.

## 3. The Releases Are Limited

The Court has reviewed the Releases to be given by the absent class members and the named plaintiff. The releases, described above, are tailored to the pleadings and release only those claims in the pleadings. There is no general release by the absent class. The named plaintiff’s general release is appropriate given that she was represented by counsel in its negotiation.



#### 4. Conclusion

Class Counsel estimated Defendant's maximum exposure at \$1,836,153. Class Counsel obtained a gross settlement valued at \$270,000. This is approximately 14.7% of Defendant's maximum exposure, which, given the uncertain outcomes, including the potential that the class might not be certified, that liability is a contested issue, and that the full amount of penalties would not necessarily be assessed even if the class is certified and liability found, the settlement is within the "ballpark of reasonableness."

#### C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED

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. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

##### 1. The Proposed Class is Numerous

There are approximately 703 putative Class Members. (Wheeler Decl. ¶21.) Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the "requirement that there be many parties to a class action is liberally construed," and citing examples wherein classes of as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

## 2. The Proposed Class Is Ascertainable

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

The class is defined above. The names of Class Members are ascertainable through Defendant’s personnel records. (Renewed Memo ISO Prelim at 14:27-28.) However, counsel represents that Defendant Tigers does not have the contact information for the 703 Class Members, and that Simpluris is assisting the parties in identifying and attempting to obtain Class Member contact information. (Wheeler Decl. ¶21.) Simpluris established a website dedicated to the settlement to allow Class Members the opportunity to contact Simpluris, and publicized the settlement on Facebook with advertisements targeted to workers in the area of Riverside County, ages between 18 to 62 years. (Polites Decl. ¶¶ 4-5.) The Facebook advertisements did not publicize the proposed settlement, but directed potential Class Members to submit their information through the contact information on the website. Simpluris did not post a Class Notice on the website nor did Simpluris discuss the terms of the proposed settlement with any potential Class Members. On November 29, 2021, Simpluris obtained advance address search (i.e. skip trace) result from Accurant, a LexisNexis product, in an attempt to locate Class Members’ addresses. This search returned a high number of results per name, demonstrating the challenge to identify Class Members by name alone. (*Id.* at ¶7.) After limiting the search results to include only people the age of 18 - 45 during the Class Period, and further limiting results to addresses in Riverside, San Bernardino, and Orange Counties, there is still a large number of addresses per

1 Class Member name that could receive a notice by mail. For example, 110 names  
2 returned more than 40 addresses each, and 29 names had more than 100 addresses. (*Id.*  
3 at ¶8.)

4 Defendant Tigers' counsel further represents that Tigers did not perform any  
5 payroll functions relating to Avent's temporary workers, and that Avent's invoices to  
6 Tigers did not contain any Class Member address information. Tigers never had the  
7 workers' addresses, phone numbers, and/or social security numbers, and Avent never  
8 provided that information to Tigers. Tigers' counsel represents that they did not receive  
9 any response from Avent in regard to requests for Class Member information, after  
10 serving subpoenas on both Avent's Registered Agent for Service of Process and  
11 Avent's last-known officer, director, or managing agent, Rodolfo Garcia, who had  
12 represented himself as Avent's "Attorney In Fact." (See Declaration of Delia A.  
13 Isvouanu.) Defendant's counsel subsequently attempted to locate a registered agent of  
14 managing member of Avent Group, Inc. but was unsuccessful. (See Declaration of  
15 Summer Dos Santos.)

16 Thus, it is necessary that class members self-identify and file a claim form.  
17

### 18 **3. There Is A Community of Interest**

19 "The community of interest requirement involves three factors: '(1) predominant  
20 common questions of law or fact; (2) class representatives with claims or defenses typical  
21 of the class; and (3) class representatives who can adequately represent the class.'" *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.  
22

23 As to predominant questions of law or fact, Plaintiff asserts that her claims present  
24 sufficient common issues of law and fact that predominate over individual issues and  
25 warrant class certification. For example, Plaintiff alleges that Defendants, as a result of a

1 common policy failed to provide lawful meal and rest breaks to Class Members. (Memo  
2 ISO Prelim at 17:9-15.)

3 As to typicality, Plaintiff alleges that her and Class Members' claims are based on  
4 the same legal theories and arise out of the same unlawful policies and practices. (Memo  
5 ISO Prelim at 17:22-23.)

6 As to adequacy, Plaintiff represents that she has no conflicts with any of the other  
7 Class Members, is aware of the benefits and risks of serving as class representative, and  
8 has participated in the litigation. (Declaration of Rosa Anguiano ("Anguiano Decl.") ¶¶  
9 4-9.) As previously stated, Class Counsel have experience in class action litigation.

#### 11 **4. Substantial Benefits Exist**

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

#### 15 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 16 OF DUE PROCESS**

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

**1. Method of class notice**

Direct Notice: Within fourteen (14) calendar days of Preliminary Approval Date, the Settlement Administrator shall commence efforts to obtain Class Member addresses found with the Accurint search. Within seven (7) calendar days after exhausting these efforts and obtaining such addresses, the Settlement Administrator shall mail copies of the Long Form Notice to approximately 354 Class Members (approximately 2,400 total notices) via regular First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The Court deems August 1, 2022 sufficient time to undertake this task.

The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. Any Notice of Class Settlement returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto within seven (7) calendar days. Class Members who receive a re-mailed Notice of Class Settlement shall have an additional thirty (30) days after the Response Deadline to: (a) submit a Claim Form; (b) submit a Request for Exclusion or (c) submit an Objection to the Settlement. Direct notice is designed to reach approximately 50% of the Class. (§65.c)

Print Publication Notice: Within fourteen (14) calendar days of Preliminary Approval Date, the Settlement Administrator shall publish the Summary Notice in Excelsior (Spanish language publication), The Press Enterprise, Inland Valley Daily Bulletin, and the San Bernardino Sun. This print publication notice will supplement the direct notice described above, and the internet advertising notice described below. (§65.d)

Internet Publication Notice: Within fourteen (14) calendar days of Preliminary Approval Date, the Settlement Administrator shall run a social media publication campaign on Facebook and Instagram targeting individuals with names that match the

1 Class List and who reside in Riverside, Orange, or San Bernardino County. The social  
2 media advertising will include a link to the settlement website so that potential Class  
3 Members can review the settlement notice and get information about filing a claim.  
4 Internet publication notice is designed to reach approximately 20% of the Class. (§65.e)

5 Class Members who receive a re-mailed Notice of Class Settlement shall have an  
6 additional (30) days after the Response Deadline to: (a) submit a Claim Form; (b)  
7 submit a Request for Exclusion; or (c) submit an Objection to the Settlement. (§65.c)

## 8 9 **2. Content of class notice.**

10 A copy of the proposed class notice is attached to the Amended Settlement  
11 Agreement as Exhibit 2. The notice includes information such as: a summary of the  
12 litigation; the nature of the settlement; the terms of the settlement agreement; the  
13 maximum deductions to be made from the gross settlement amount (i.e., attorney fees  
14 and costs, the enhancement award, and claims administration costs); the procedures and  
15 deadlines for participating in, opting out of, or objecting to, the settlement; the  
16 consequences of participating in, opting out of, or objecting to, the settlement; and the  
17 date, time, and place of the final approval hearing. See Cal Rules of Court, rule  
18 3.766(d). It is to be given in both English and Spanish (§35).

## 19 **3. Settlement Administration Costs**

20 Settlement administration costs are estimated at **\$49,734** for settlement  
21 administration costs including the cost of notice. (§67.k) Prior to the time of the final  
22 fairness hearing, the settlement administrator must submit a declaration attesting to the  
23 total costs incurred and anticipated to be incurred to finalize the settlement for approval  
24 by the Court. While on the high side this amount may preliminarily be considered  
25 reasonable given the work required to contact proposed class members.

1           **E.    ATTORNEY FEES AND COSTS**

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

7           Ultimately, the award of attorney fees is made by the court at the fairness  
8 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*  
9 *v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*  
10 (2000) 82 Cal.App.4<sup>th</sup> 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 1122,  
11 1132-1136. In common fund cases, the court may use the percentage method. If  
12 sufficient information is provided a cross-check against the lodestar may be conducted.  
13 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503. Despite any  
14 agreement by the parties to the contrary, “the court ha[s] an independent right and  
15 responsibility to review the attorney fee provision of the settlement agreement and  
16 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*  
17 *Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.

18           The question of class counsel’s entitlement to **\$90,000** (33 1/3%) in attorney fees  
19 will be addressed at the final fairness hearing when class counsel brings a noticed  
20 motion for attorney fees. If a lodestar analysis is requested class counsel must provide  
21 the court with current market tested hourly rate information and billing information so  
22 that it can properly apply the lodestar method and must indicate what multiplier (if  
23 applicable) is being sought.

24           Fee Split: Plaintiff’s counsel represent that any attorneys’ fees awarded by the  
25 Court will be distributed as follows: 50% to the Law Office of Scott E. Wheeler and

1 50% to the Wand Law Firm, P.C. (Wheeler Decl. ¶31.) Plaintiff represents that she  
2 approved this fee division in writing at the commencement of the litigation. (Anguiano  
3 Decl. ¶6.)

4 Class counsel should also be prepared to justify the costs sought (capped at  
5 \$20,000) by detailing how they were incurred.

#### 6 7 **F. SERVICE AWARD**

8 The Settlement Agreement provides for a service award of up to \$5,000 for the  
9 class representative. Trial courts should not sanction enhancement awards of thousands  
10 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,  
11 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of  
12 quantification of time and effort expended on the litigation, and in the form of reasoned  
13 explanation of financial or other risks incurred by the named plaintiffs, is required in  
14 order for the trial court to conclude that an enhancement was ‘necessary to induce [the  
15 named plaintiff] to participate in the suit . . . .’” *Clark v. American Residential Services*  
16 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

17 The Court will decide the issue of the enhancement award at the time of final  
18 approval.

#### 19 20 **V. CONCLUSION AND ORDER**

21 The Court hereby:

- 22 (1) Grants preliminary approval of the settlement as fair, adequate, and  
23 reasonable;  
24 (2) Grants conditional class certification;  
25 (3) Appoints Rosa Anguiano as Class Representative;



(4) Appoints the Law Office of Scott E. Wheeler and the Wand Law Firm, P.C.  
as Class Counsel;

(5) Approves Legal Aid at Work as the cy pres recipient;

(6) Appoints Simpluris, Inc. as Settlement Administrator;

(7) Approves the proposed notice plan; and

(8) Approves the proposed schedule of settlement proceedings as follows:

- Preliminary approval hearing: June 8, 2022
- Launch of settlement website, telephone support system, and commencement of efforts to locate addresses for class members: June 20, 2022
- Deadline for settlement administrator to mail notices: August 1, 2022
- Deadline for class members to file claim: October 31, 2022
- Deadline for class members to opt out: October 31, 2022 (90 calendar days from the initial mailing of the Notice Packets)
- Deadline for class members to object: October 31, 2022 (90 calendar days from the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval: November 16, 2022 (16 court days prior to final fairness hearing)
- Final fairness hearing: December 12, 2022, at 9:00 a.m.

Dated: 6/10/2022



MAREN E. NELSON

Judge of the Superior Court