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VENTURA SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

MONSERRAT LOPEZ, an individual, on behalf of herself, on behalf of all persons similarly situated, and in her representative capacity on behalf of the State of California and fellow Aggrieved Employees,

Plaintiffs,

vs.

ADIDAS AMERICA, INC., an Oregon corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. 56-2021-00549844-CU-OE-VTA

[PROPOSED] ORDER GRANTING FINAL APPROVAL AND JUDGMENT

Date: April 4, 2022

Time: 8:20 a.m.

Judge: Hon. Mark Borrell

Dept.: 40

**VENTURA
SUPERIOR COURT
FILED**

APR 12 2022

BRENDA L. MCCORMICK
Executive Officer and Clerk

By: **ELIZABETH MULLER** Deputy

1 Plaintiffs' motion for an order finally approving the Class Action Settlement Agreement
2 ("Agreement") and motion for an award of attorneys' fees, costs and service awards duly came on
3 for hearing on April 4, 2022 before the above-entitled Court. Zakay Law Group, APC and the
4 JCL Law Firm, APC appeared on behalf of Plaintiff MONSERRAT LOPEZ ("Plaintiff"). Littler
5 Mendelson, PC appeared on behalf of Defendant ADIDAS AMERICA, INC. ("Defendant").

6 I.

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the
11 Agreement.

12 2. This Court has jurisdiction over the subject matter of this litigation pending
13 in the California Superior Court for the County of Ventura ("Court"), Case No. 56-2021-
14 00549844-CU-OE-VTA, entitled *Lopez, et al., v. Adidas America, Inc. et al.*, and over all Parties
15 to this litigation, including the Class.

16 **Preliminary Approval of the Settlement**

17 3. On December 1, 2021 the Court granted preliminary approval of a class-
18 wide settlement. At this same time the court approved certification of a provisional settlement
19 class for settlement purposes only. The Court confirms this Order and finally approves the
20 settlement and the certification of the Class.

21 **Notice to the Class**

22 4. In compliance with the Preliminary Approval Order, the Notice Packet was
23 mailed by first class mail to the Class Members at their last known addresses on December 16,
24 2021. Mailing of the Notice Packet to their last known addresses was the best notice practicable
25 under the circumstances and was reasonably calculated to communicate actual notice of the
26 litigation and the proposed settlement to the members of the Class Members. The Court finds that
27 the Notice Packet provided fully satisfies the requirements of California Rules of Court, rule
28 3.769.

1 5. The deadline for opting out or objecting was January 31, 2022. There was
2 an adequate interval between notice and deadline to permit Class Members to choose what to do
3 and act on their decision. No Class Members objected. No Class Members requested exclusion.

4 **Fairness Of The Settlement**

5 6. The Agreement provides for a Gross Settlement Amount of \$1,500,000.
6 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
7 Cal.App.4th 1794, 1801.)

8 a. The settlement was reached through arms-length bargaining between
9 the parties. There is no evidence of any collusion between the parties in reaching the proposed
10 settlement.

11 b. The Parties' investigation and discovery have been sufficient to
12 allow the Court and counsel to act intelligently.

13 c. Counsel for all parties are experienced in similar employment class
14 action litigation and have previously settled similar class claims on behalf of employees claiming
15 compensation. All counsel recommended approval of the Settlement.

16 d. The percentage of objectors and requests for exclusion is small. No
17 objections were received. No requests for exclusion were received.

18 e. The participation rate is high. All Class Members will be
19 participating in the Settlement and will be sent settlement payments.

20 7. The consideration to be given to the Class Members under the terms of the
21 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
22 asserted in this Action and is fair, reasonable and adequate compensation for the release of the
23 Released Class Claims, given the uncertainties and risks of the litigation and the delays which
24 would ensue from continued prosecution of the Action.

25 8. The Agreement is finally approved as fair, adequate and reasonable and in
26 the best interests of the Class Members.

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1 **Attorneys' Fees and Litigation Expenses**

2 9. The Agreement provides for an award of up to 1/3 of the Total Settlement
3 Amount (\$500,000) to Class Counsel as the Class Counsel fees payment in this Action, subject to
4 the Court's approval. The Agreement also provides for an award of their actual litigation expenses
5 incurred in an amount not to exceed \$25,000 as the Class Counsel litigation expenses payment.
6 Class Counsel requests an award of \$25,000 as reimbursement for litigation expenses, and
7 \$500,000 for attorneys' fees.

8 10. An award of \$500,000 for the Class Counsel fees and \$25,000 for the Class
9 Counsel litigation expenses payment is reasonable in light of the contingent nature of Class
10 Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class Counsel.
11 The requested attorneys' fee award represents 1/3 of the common fund, which is reasonable and at
12 the low end of the range for fee awards in common fund cases and is supported by Class
13 Counsel's lodestar.

14 **Class Representative Service Award**

15 11. The Agreement provides for a service award of up to \$10,000 for Plaintiff
16 as the Class Representative Service Award, subject to the Court's approval. The Court finds that
17 the amount of \$10,000 is reasonable in light of the risks and burdens undertaken by the Plaintiff in
18 this class action litigation.

19 **Settlement Administration Costs**

20 12. The Agreement provides for Settlement Administration Costs to be paid in
21 an amount not to exceed \$20,000. The Declaration of the Settlement Administrator provides that
22 the actual claims administration expenses were \$20,000. The amount of this payment is
23 reasonable in light of the work performed by the Settlement Administrator.

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II.

ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Class is certified for the purposes of settlement only. The Class is hereby defined to include:

All non-exempt retail store employees who are or previously were employed by and performed work for Defendant in California during the Class Period.

The Class Period is the period between September 16, 2017 and October 1, 2021.

2. Every person in the Class who did not opt out is a Settlement Class Member.

3. The Agreement is hereby approved as fair, reasonable, adequate, and in the best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with this Order and the terms of the Agreement.

4. Class Counsel are awarded attorneys' fees in the amount of \$500,000 and litigation expenses in the amount of ~~\$25,000~~ ^{\$14,847.43}. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff or members of the Class.

5. The payment of service award to the Plaintiff in the amount of \$10,000 is approved.

6. The payment of \$20,000 to the Settlement Administrator for Settlement Administration Costs is approved.

7. The PAGA Payment of \$80,000 is approved.

8. Final Judgment is hereby entered in this action. The Final Judgment shall bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge of Defendant from all claims alleged or which could have been alleged based on the facts alleged in any and all complaints filed in the Actions which occurred during the Class Period, specifically including claims for: (1) Failure to pay overtime wages; (2) Failure to pay minimum wages; (3) Failure to provide required meal periods; (4) Failure to provide required rest periods;

1 (5) Failure to provide accurate itemized wage statements; (6) Failure to provide wages when due;
2 as well as any federal, state or local provisions. To the extent employees are required to "opt-in"
3 to have this release be deemed effective under federal law, the acceptance and negotiation of any
4 settlement check shall be deemed effective for that purpose. The Released Class Claims expressly
5 exclude all other claims, including claims for vested benefits, wrongful termination,
6 unemployment insurance, disability, social security, workers' compensation, and class claims
7 outside of the Class Period.

8 9. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
9 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General
10 Act ("PAGA") and shall release Defendant from claims which could have been alleged under
11 PAGA based on the facts disclosed to the LWDA in Plaintiff's notice to the LWDA, which
12 occurred during the PAGA Period, including PAGA penalties for (1) Failure to pay overtime
13 wages; (2) Failure to pay minimum wages; (3) Failure to provide required meal periods; (4)
14 Failure to provide required rest periods; (5) Failure to provide accurate itemized wage statements;
15 (6) Failure to provide wages when due, including at the time of termination; (7) Failure to
16 maintain true and accurate records or (8) Failure to provide suitable seating. Excluded from the
17 PAGA Released Claims are any claims under PAGA which were not and could not have been
18 alleged based upon the facts set forth in Plaintiff's Complaints and administrative exhaustion letter
19 and expressly excluding all other claims, including claims vested benefits, wrongful termination,
20 unemployment insurance, disability, social security, workers' compensation, and PAGA claims
21 outside the PAGA Period.

22 The term "Aggrieved Employees" is hereby defined to include all non-exempt retail store
23 employees who are or previously were employed by Defendant in California during the PAGA
24 Period. The PAGA Period means the period between October 27, 2019 and October 1, 2021.

25 10. In addition to the release given by each Settlement Class Member, Plaintiff
26 also generally releases Defendant from any and all of the Plaintiff's Released Claims as defined in
27 the Agreement. This general release by Plaintiff also includes a waiver of rights under California
28 Civil Code Section 1542.

1 11. The Agreement is not an admission by Defendant, nor is this Final
2 Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
3 wrongdoing by Defendant. Neither this Final Approval Order, the Settlement, nor any document
4 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may
5 be used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever.
6 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
7 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
8 concession with regard to the denials or defenses by Defendant and shall not be offered in
9 evidence in any action or proceeding against Defendant in any court, administrative agency or
10 other tribunal for any purpose as an admission whatsoever other than to enforce the provisions of
11 this Final Approval Order and Judgment, the Settlement, or any related agreement or release.
12 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
13 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
14 records on file in the Action as evidence of the Settlement to support a defense of res judicata,
15 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
16 claims being released by the Settlement.

17 12. Notice of entry of this Final Approval Order and Judgment shall be given to
18 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send
19 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
20 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
21 indicated in the Notice Packet.

22 13. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
23 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
24 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
25 connection with the distribution of settlement benefits.

26 11. If the Settlement does not become final and effective in accordance with the
27 terms of the Settlement, resulting in the return and/or retention of the Total Settlement Amount to
28 Defendant consistent with the terms of the Settlement, then this Final Approval Order and

1 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall
2 be vacated.

3
4 **IT IS SO ORDERED AND ADJUDGED. LET JUDGMENT BE FORTHWITH**
5 **ENTERED ACCORDINGLY.**

6 DATED: April 4, 2022
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8 
9 Hon. Mark Borrell
10 Judge, Superior Court for the State of California,
County of Ventura

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