

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ALEXANDER HERNANDEZ, individually, and
on behalf of other members of the general public
similarly situated;

Plaintiff,

v.

SAINT- GOBAIN PERFORMANCE
PLASTICS CORPORATION, a California
corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 30-2020-01142388-CU-OE-CXC

Assigned for All Purposes to:
Honorable Randall J. Sherman
Department CX-105

CLASS ACTION

**~~[PROPOSED]~~ REVISED ORDER OF
FINAL APPROVAL AND JUDGMENT**

Hearing Date: November 19, 2021
Hearing Time: 10:00 a.m.
Hearing Place: Department CX-105

Complaint Filed: June 11, 2020
FAC Filed: April 2, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Alexander Hernandez (“Plaintiff”)
2 motion for final approval of a class action settlement and receiving the Attorneys’ Fees, the Attorneys’
3 Costs, and the Named Plaintiff’s Enhancement, and after considering the papers submitted in support
4 of the motion, including the Joint Stipulation of Class Action and PAGA Settlement and Release
5 (“Settlement Agreement,” “Settlement,” or “Agreement”), hereby FINDS AND ORDERS as follows:

6 This is a putative wage-and-hour class action lawsuit. Plaintiff is former employee of
7 Defendant Saint-Gobain Performance Plastics Corporation (“Defendant”). The operative complaint in
8 the Action asserts nine (9) causes of action for wage and hour violations. Plaintiff has brought this
9 Action on behalf of all persons who are employed or have been employed by Defendant in the State of
10 California as hourly and/or other non-exempt employees during the Class Period (“Class”). The Class
11 Period is the time period from June 11, 2016 through April 7, 2021 (“Class Period”). There are four
12 hundred fifty-six (456) Class Members who did not opt out (“Settlement Class Members”).¹

13 On July 9, 2021, the Court granted Preliminary Approval of the Settlement. Plaintiff now
14 moves for Final Approval of the Settlement.

15 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
16 defined in the Settlement Agreement as amended, except as may otherwise be ordered.

17 The following Class is certified for purposes of settlement only: all persons who are employed
18 or have been employed by Defendant in the State of California as hourly and/or other non-exempt
19 employees during the time period from June 11, 2016 through April 7, 2021.

20 Generally, “questions whether a settlement was fair and reasonable, whether notice to the class
21 was adequate, whether certification of the class was proper, and whether the attorney fee award was
22 proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.*
23 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

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28 ¹ There are four hundred sixty-one (461) Class Members, but Simpluris received five (5) Opt-Out Requests. As a result,
there are four hundred fifty-six (456) Settlement Class Members.

1 In determining whether a class settlement is fair, adequate and reasonable, the
2 trial court should consider relevant factors, such as “the strength of plaintiffs’
3 case, the risk, expense, complexity and likely duration of further litigation, the
4 risk of maintaining class action status through trial, the amount offered in
5 settlement, the extent of discovery completed and the stage of the proceedings,
6 the experience and views of counsel, the presence of a governmental
7 participant, and the reaction of the class members to the proposed settlement.

8 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
9 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d
10 615, 624.)

11 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing
12 of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.*, *supra*, 91
13 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent
14 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
15 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
16 reasonable and adequate to all concerned.” (*Ibid.*, *quoting Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and
17 *Officers for Justice v. Civil Service Com’n, etc.*, *supra*, 688 F.2d at p. 625, internal quotation marks
18 omitted.)

19 The burden is on the proponent of the settlement to show that it is fair and
20 reasonable. However “a presumption of fairness exists where: (1) the
21 settlement is reached through arm’s-length bargaining; (2) investigation and
22 discovery are sufficient to allow counsel and the court to act intelligently; (3)
23 counsel is experienced in similar litigation; and (4) the percentage of objectors
24 is small.”

25 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, *citing Dunk*, *supra*, 48
26 Cal.App.4th at p. 1802.)

27 Although [t]here is usually an initial presumption of fairness when a proposed
28 class settlement ... was negotiated at arm’s length by counsel for the class, ...
it is clear that the court should not give rubber-stamp approval. Rather, to
protect the interests of absent class members, the court must independently and
objectively analyze the evidence and circumstances before it in order to
determine whether the settlement is in the best interests of those whose claims
will be extinguished. To make this determination, the factual record before the
... court must be sufficiently developed... . The proposed settlement cannot be
judged without reference to the strength of plaintiffs’ claims. The most

important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. The court must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case, but nonetheless it must eschew any rubber stamp approval in favor of an independent evaluation.

(*Kullar, supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

Defendant will pay \$2,400,000, which includes: (1) the Administration Fees and Costs in an amount of \$9,500; (2) the Private Attorney General Act (“PAGA”) Payment in the amount of \$100,000, seventy-five percent (75%) of which (\$75,000) shall be paid to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which (\$25,000) shall be paid to all persons who are employed or have been employed by Defendant in the state of California as non-exempt employees during the period of time beginning on March 30, 2019, and ending on July 9, 2021 (“PAGA Payment,” “PAGA Allocation,” “PAGA Member,” and “PAGA Class Period”); (3) the Named Plaintiff’s Enhancement in the sum of \$10,000 to Plaintiff; (4) the Attorneys’ Fees in the sum \$800,000, which is one-third (1/3) of the Gross Settlement Amount, (5) the Attorneys’ Costs in the amount of \$12,627.15 as reimbursement for litigation costs; and (6) Settlement Payments payable to all Settlement Class Members. No claim form is necessary to participate in the Settlement. There is no reversion. Funding of the Settlement will be as follows:

Defendant will deposit the Funding Payment into an account established by the Settlement Administrator within thirty days (30) days of the Effective Date. In the event an appeal, writ, motion challenging the judgment or other collateral attack is made, the funds shall not be distributed until the challenge or other collateral attack is resolved in a manner that upholds the settlement in its entirety. The distribution of Settlement Payments to Settlement Class Members shall occur no later than the Settlement Proceeds Distribution Deadline, which is fourteen (14) days after the Funding Payment has been made by Defendant to the Settlement Administrator based on the schedule explained in Paragraph 61 of the Agreement. Moreover, the distribution of Attorneys’ Fees, Attorneys’ Costs, and the Named Plaintiff’s Enhancement shall occur no later than the payment date of the payment under the Settlement Proceeds Distribution Deadline.

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1 As noted in the Preliminary Approval Order, the Settlement is entitled to a presumption of
2 fairness. In his moving papers, Plaintiff contends that the proposed Settlement was the product of
3 arms-length negotiations following extensive litigation and following extensive discovery and
4 exchange of documentation relating to the claims made by Plaintiff. Moreover, the negotiations were
5 facilitated with the assistance of a skilled and experienced mediator, Jeffrey A. Ross, an experienced
6 and well-respected class action mediator.

7 With respect to the benefit to the Class Members, Plaintiff's moving papers indicate that the
8 average Settlement Payment will be approximately \$3,245.38 under the proposed allocation, which is
9 based on the number of weeks individual Class Members worked.

10 Settlement Class Members who are sent Settlement Payments shall have one hundred fifty
11 (150) days after mailing by the Settlement Administrator to cash their settlement checks. If such
12 Settlement Class Members do not cash their checks within that period, those checks will become void,
13 and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed
14 within one hundred and fifty (150) days of mailing shall, subject to Court approval, be distributed
15 pursuant to the State Controller Unclaimed Property Fund, or as otherwise directed by California Code
16 of Civil Procedure Section 384 and as ordered by the Court.

17 The Plaintiff has explained the risks and costs associated with continuing with the litigation
18 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiff has
19 satisfactorily assessed the maximum value of the claims and of the reasonableness of the discount
20 accepted in the settlement considering these risks. Finally, the Declaration of the Settlement
21 Administrator, Lindsay Kline, states that the Class Notice and the Opt-Out Request (collectively,
22 known as the "Notice Packet") were mailed to four hundred sixty-one (461) Class Members, there
23 were only five (5) Opt-Out Requests from the Settlement, and there were no objections to the
24 Settlement. This is further proof of the fairness of the Settlement. The Declaration of Class Counsel
25 provides sufficient information about counsel's experience in litigating class action lawsuits.

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1 The Court also has an independent right and responsibility to review the requested attorneys'
2 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
3 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney's fees requested by
4 Class Counsel in the sum of \$800,000 is one-third (1/3) of the common fund created for the benefit of
5 the Class Members and is supported by use of the percentage-fee method. (*See Laffitte v. Robert Half*
6 *International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the Declaration of Douglas Han, Class
7 Counsel collectively expended 563.9 hours with a total lodestar figure of \$370,147.50. While the
8 lodestar cross-check leads to a positive multiplier, the settlements resulting an average Settlement
9 Payment of \$3,245.38 justifies the multiplier. Considering the contingent nature of the representation,
10 the ongoing monitoring of the settlement administration, and the value of the settlement obtained on
11 behalf of the Class, the requested hourly rates and the fee is justified. Consequently, the Court finds
12 that the fee request is reasonable, and it is therefore approved.

13 The Court has also reviewed Class Counsel's declarations regarding the costs expended in the
14 prosecution of this litigation. Under the terms of the settlement, Plaintiff may seek reimbursement of
15 up to \$25,000 in actual litigation costs. The Court finds Plaintiff has expended \$12,627.15 in actual
16 litigation costs, and such costs were reasonable. Thus, the Court approves the payment of \$12,627.15
17 in costs from the settlement fund for the reimbursement of Class Counsel's actual litigation costs.

18 The rationale for making the Named Plaintiff's Enhancement is that the Class Representative
19 should be compensated for the expense or risk he has incurred in conferring a benefit on other
20 members of the Class. Such an enhancement payment is appropriate if it is necessary to induce an
21 individual to participate in the suit. Criteria courts may consider in determining whether to make an
22 enhancement payment include: 1) the risk to the class representative in commencing suit, both
23 financial and otherwise; 2) the notoriety and personal difficulties encountered by the class
24 representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the
25 litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative because of
26 the litigation.

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1 The Court has reviewed Plaintiff's declaration, which outlines his involvement in the lawsuit.
2 Given the risks inherent in service as the Class Representative, the duration of the case and time
3 involved, and the benefits created for the Class, the Court approves a Named Plaintiff's Enhancement
4 in the amount of \$10,000 to Plaintiff.

5 The Court has reviewed the Declaration of Lindsay Kline, the Project Manager for Simpluris,
6 Inc. ("Simpluris") the Court-approved Settlement Administrator. The Court finds that notice was
7 provided to the Class pursuant to the preliminary approval order, and that notice was sufficient and
8 that it satisfies due process. Simpluris has discharged its duties to provide notice to the Class and
9 approves a payment of \$9,500 for its services in administering this settlement, including the mailing of
10 settlement awards according to the terms of the Settlement Agreement.

11 The claims that Plaintiff and the other Settlement Class Members are releasing in exchange for
12 the consideration provided for by the Agreement are any and all claims alleged in the Complaint or
13 which could have been alleged in the Complaint based on the allegations, facts, matters, transactions
14 or occurrences alleged therein, and shall specifically include without limiting the generality thereof all
15 causes of action listed in the Complaint. The release of the foregoing claims, extends to all theories of
16 relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of
17 action, lawsuits or based on other theories of relief, whether under California law, state law or
18 common law (including, without limitation, as violations of the California Labor Code, the Wage
19 Orders, applicable regulations, and California's Business and Professions Code Section 17200).
20 "Settled Claims" includes all types of relief available for the above-referenced claims, including,
21 without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees,
22 costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. ~~The Final~~
23 ~~Judgment shall expressly provide that it covers and bars as a matter of law each and every Class~~
24 ~~Member other than those who have opted out from asserting any Settled Claims in the future ("Settled~~
25 ~~Claims").~~

26 The five (5) individuals that have properly excluded themselves from the Settlement are: (a)
27 Keith Sanders; (b) Ray Dickerson; (c) Jorge Saucier; (d) Xiong P. Vue; and (e) Diomedes B.
28 Rodriguez. These individuals will not be bound by this judgment.

1 Furthermore, the Settled PAGA Claims are any and or all PAGA claims alleged in the Action
2 or which could have been alleged in the Action based on the allegations, facts, matters, transactions or
3 occurrences alleged therein, and shall specifically include without limiting the generality thereof all
4 causes of action listed in the Complaint. The foregoing claims, extends to all theories of relief
5 regardless of whether the claim is, was or could have been alleged as separate claims, causes of action,
6 lawsuits or based on other theories of relief, including under the California Labor Code, the Wage
7 Orders, applicable regulations (“Settled PAGA Claims”).

8 The Released Parties include Defendant and its affiliated companies, parents, members,
9 subsidiaries, related companies and business concerns, predecessors, and successors, past and present,
10 and each of them, as well as each of their insurers, partners, trustees, directors, shareholders, officers,
11 agents, attorneys, servants, and employees, past and present, and each of them and all working with or
12 in concert with them or connected with them (“Released Parties”).

13 The Settlement Agreement will be binding upon, and inure to the benefit of, the successors and
14 assigns of the Parties.

15 In entering into this Agreement, Defendant does not admit, and specifically denies, that it has:
16 violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to
17 any statute or any other applicable laws, regulations, or legal requirements; breached any contract;
18 violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other
19 unlawful conduct with respect to its employees or any other person or entity. Neither this Agreement,
20 nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings,
21 payouts or other events associated with it, shall be construed as an admission or concession by
22 Defendant of any such violation(s) or failure(s) to comply with any applicable law by Defendant or
23 any Released Parties. Except as necessary in a proceeding to approve, interpret or enforce the terms of
24 this Agreement, this Agreement and its terms and provisions shall not be offered or received as
25 evidence in any action or proceeding to establish any liability or admission on the part of the Released
26 Parties or to establish the existence of any condition constituting a violation of, or noncompliance
27 with, federal, state, local or other applicable law.

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1 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
2 Attorneys' Fees, Attorneys' Costs, and Named Plaintiff's Enhancement is GRANTED. The Settlement
3 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

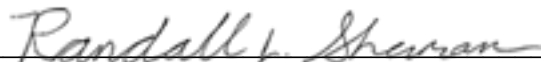
4 The Court sets a Final Report Hearing for August 12, 2022 at 10:00 a.m. to confirm that
5 distribution efforts are fully completed, including the distribution of uncashed class members check to
6 State Controller's Office Unclaimed Property Fund in the names of the applicable payees after one
7 hundred fifty (150) days, that the Administrator's work is complete, and that the court's file thus may
8 be closed. All supporting papers must be filed at least sixteen (16) days before the Final Report
9 Hearing date.

10 Pursuant to California Rules of Court Rule 3.771(b), the notice of this Judgment and Final
11 Approval Order shall be included with the checks mailed to the Settlement Class Members informing
12 them that a judgment has been entered and where they may obtain a copy of the judgment.

13 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
14 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
15 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
16 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
17 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
18 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

19 IT IS SO ORDERED.

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22 DATED: **December 6, 2021**


HONORABLE RANDALL J. SHERMAN
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mking@justicelawcorp.com

On December 7, 2021, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGEMENT

for the following case: **Hernandez v. Saint-Gobain Performance Plastics Corporation**
LWDA/Court Case No.: **LWDA Case No.: CM-780933-20**
 Court Case No.: 30-2020-01142388-CU-OE-CXC
 Orange County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 7, 2021, at Pasadena, California.



Madeline King