

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 30 2022

BY Christian Hernandez
CHRISTIAN HERNANDEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

AHARON SPRY and CHRISTOPHER
CARRILLO, individually, on behalf of other
members of the general public similarly
situated, and on behalf of aggrieved employees
pursuant to the Private Attorneys General Act
of 2004 ("PAGA");

Plaintiffs,

v.

PRIME LUBE, INC., a New Jersey
corporation; BLUE SKY GOLDEN STATE
LLC, a Delaware limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: CIVDS2018738

Assigned for All Purposes to:
Honorable David Cohn
Department S-26

CLASS ACTION

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

Hearing Date: June 30, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department S-26

Complaint Filed: September 9, 2020
FAC Filed: March 9, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Aharon Spry's and
2 Christopher Carrillo's ("Plaintiffs") Motion for Final Approval of Class Action Settlement,
3 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments, and after
4 considering the papers submitted in support of the motion, including the Joint Stipulation and
5 Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS
6 AND ORDERS as follows:

7 Plaintiffs and Defendants Prime Lube, Inc. and Blue Sky Golden State, LLC
8 ("Defendants") entered a Settlement Agreement on or about February 2, 2022 to settle this class
9 action lawsuit.

10 The Court entered an Order dated March 4, 2022 preliminarily approving the settlement
11 of this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
12 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
13 Members, scheduling a Fairness Hearing for June 30, 2022, and providing Class Members with
14 an opportunity to object to the Settlement or exclude themselves from the Class.

15 The Court held a Fairness Hearing on June 30, 2022 to determine whether to give final
16 approval to the settlement of this class action lawsuit.

17 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
18 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
19 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
20 in the Settlement Agreement.

21 2. Jurisdiction. Because adequate notice has been disseminated, and all Class
22 Members have been given the opportunity to request exclusion from the Class, the Court has
23 personal jurisdiction with respect to the claims of all Class Members. The Court also has subject
24 matter jurisdiction over this class action lawsuit, including jurisdiction to approve the Settlement,
25 grant final certification of the Class, and dismiss the class action lawsuit.

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3. Final Class Certification. The Court finds the Class satisfies all applicable requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process. Accordingly, the Court certifies, a Class consisting of all current and former hourly non-exempt employees who worked at least one pay period for Defendants in California at any time during the period from September 9, 2016, to February 10, 2022 (“Class” and “Class Period”). There are eighty-two (82) Class Members who did not submit valid and timely requests to exclude themselves from this Settlement (“Participating Class Members”).

4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation and Michael Nourmand and James A. De Sario of The Nourmand Law Firm, APC (collectively, known as “Class Counsel”), have fully and adequately represented the Class for purposes of entering and implementing the Settlement Agreement and have satisfied the requirements of Code of Civil Procedure section 382.

5. Notice Packet. The Court finds that the Notice of Class Action Settlement (“Class Notice”) and the Election Not to Participate In (“Opt Out” From) Class Action Settlement (“Exclusion Form”) (collectively, “Notice Packet”) and its distribution to Class Members have been implemented pursuant to the Settlement Agreement and this Court’s Preliminary Approval Order and that they:

a. constitute notice that was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the pendency of the class action lawsuit; (ii) the material terms and provisions of the Settlement and their rights under the Settlement; (iii) their right to object to any aspect of the Settlement (including final certification of the Class, the fairness, reasonableness and adequacy of the settlement, the adequacy of the Class's representation by Plaintiffs and Class Counsel, and/or the award of Class Representative Enhancement Payments, Attorney Fee Award, and Cost Award); (iv) their right to exclude themselves from the Class and the Settlement; (v) their right to claim an Individual Settlement Share; (vi) their right to appear at the Settlement Fairness hearing; and (vii) the binding effect of the orders and judgment in the class action lawsuit, whether favorable or unfavorable, on all Participating Class Members;

b. constitute notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process; and

c. constitute the best practicable notice to Class Members under the circumstances of the class action lawsuit; and

d. constitute notice reasonable, adequate, and sufficient to Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered in good faith and are the product of arm's-length negotiations by experienced counsel who have done a meaningful investigation of the claims in the dispute. The Settlement Agreement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the Parties' best interests. The Parties are directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Agreement and this Order and Judgment are binding on the Participating Class Members, as well as their heirs, executors and administrators, successors, and assigns, and those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in the class action lawsuit and are encompassed by the release of the Participating Class Members' Released Claims as set forth in the Agreement. The Agreement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted requests for exclusion.

8. Released Claims. Upon Court approval of the Settlement and Defendants' fulfillment of their payment obligations under section III (J)(8)(a) of the Agreement, Plaintiffs and the other Participating Class Members will fully and finally release and discharge the Released Parties from the Released Claims.

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1 a. Effect of PAGA Settlement. Upon Court approval of the Settlement and
2 Defendants' fulfillment of their payment obligations under section III (J)(8)(a) of
3 the Agreement, the California Labor and Workforce Development Agency
4 ("LWDA"), and any other representative, proxy, or agent thereof, including, but
5 not limited to, any and all Eligible Aggrieved Employees are barred from
6 pursuing any action for civil penalties under the Labor Code Private Attorneys
7 General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*, against the
8 Released Parties, based on or arising out of the Released Claims, any and all
9 claims, debts, liabilities, demands, obligations, guarantees, damages, wages,
10 benefits, penalties, interest, attorney's fees, costs, expenses, actions or causes of
11 action, in law or equity, whether known or unknown, which have been or could
12 have been asserted by each Plaintiff and/or any of the Eligible Aggrieved
13 Employees and/or that could have been assessed upon and collected from the
14 Released Parties under PAGA, based on the factual allegations in the complaints,
15 including, but not limited to, purported violations and alleged violations of Labor
16 Code sections alleged in Plaintiffs' letters to the LWDA which occurred during
17 the PAGA Timeframe.

18 b. Plaintiffs' Release of Claims and General Release. Upon Defendants' fulfillment
19 of their payment obligations under section III (J)(8)(a) of the Agreement, in
20 exchange for the Class Representative Enhancement Payments of \$5,000 to each
21 Plaintiff, and in recognition of their work and efforts in obtaining the benefits for
22 the Class and undertaking the risk of paying litigation costs if this matter had not
23 successfully resolved, Plaintiffs provide a general release of claims for themselves
24 and their respective spouses, heirs, successors and assigns. With respect to the
25 General Release, each of the Plaintiffs stipulate and agree, as of the Effective
26 Final Settlement Date, Plaintiffs shall be deemed to have expressly waived and
27 relinquished, to the fullest extent permitted by law, the provisions, rights, and
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benefits of section 1542 of the Civil Code, or any other similar provision under federal or state law.

c. Released Parties. The Released Parties include Defendants and their former, present and future owners, each of their respective parent companies, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, management companies, agents (including without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, or legal representatives.

9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

10. Class Representative Enhancement Payments. The Court finds the Class Representative Enhancement Payments of \$5,000, to be paid by Defendants to each Plaintiff out of the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Enhancement Payments are to be paid pursuant to the terms set forth in the Agreement.

a. The rationale for making enhancement payments is the class representatives should be compensated for the expense and risk they have incurred in conferring a benefit on other class members. Such enhancement payments are appropriate if they are necessary to induce individuals to participate in the suit. Criteria courts may consider include: (1) the risk to the class representatives in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and effort spent by the class representatives; (4) the duration of the litigation; and (5) personal benefit (or lack thereof) enjoyed by class representatives.

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b. The Court has reviewed Plaintiffs' declarations outlining their involvement. Given the risks inherent in their service as Class Representatives, the duration and time involved, and the benefits created for the Class, the Court approves the Class Representative Enhancement Payments of \$5,000 to each Plaintiff.

11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award of \$70,000, to be paid out of the Gross Settlement Amount by Defendants to Class Counsel, to be reasonable and appropriate. The Court further finds the award of the Cost Award as reimbursement for actual litigation costs collectively incurred of ~~\$18,025~~ ^{# 18,010.58}, to be paid by Defendants to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement. Defendants shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel, or any other counsel representing Plaintiffs or Class Members, or incurred by Plaintiffs or Class Members in connection with or related in any manner to the class action lawsuit, the Settlement, the administration of the Settlement, and/or the Participating Class Members' Released Claims.

a. The Court has an independent right and responsibility to review the requested Attorney Fee Award and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The Attorney Fee Award requested by Class Counsel of \$70,000 is one-third (1/3) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, the financial risk taken by Class Counsel, the novel and difficult nature of this matter, the skills required to deal with these issues, percentage of fees awarded in other cases, and the contingent fees charged in the private marketplace, the Court finds the requested Attorney Fee Award of \$70,000 is consistent with the legal marketplace, is reasonable, and is approved.

b. The Court reviewed Class Counsel's declarations regarding the costs expended in the prosecution of this litigation. Under the terms of the Settlement, Plaintiffs may seek reimbursement of up to \$20,000 in litigation costs. The Court finds Plaintiffs expended \$18,025 in litigation costs and that such costs were reasonable in the prosecution of this matter. Therefore, the Court approves the payment of the Cost Award of \$18,025 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Costs. The Court finds the Administration Costs of \$6,833, to be paid by Defendants to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court has reviewed the declaration of Kevin Lee from Phoenix Class Action Administration Solutions ("Phoenix"), the Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, the notice constitute the best practicable notice to the Class, and the notice satisfied due process. Phoenix has discharged its duties to provide notice to the Class. Thus, the Court approves a payment for Administration Costs of \$6,833 for Phoenix's services in administering this settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$10,000, seventy-five percent (75%) of which (\$7,500) will be distributed to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$2,500) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding of the Settlement. Upon the Effective Final Settlement Date, Defendants shall deposit the Gross Settlement Amount of into the Qualified Settlement Fund. Defendants shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share. Within fourteen (14)

1 calendar days after the funding of the Settlement, the Settlement Administrator shall calculate
2 and pay all payments due under the Settlement Agreement.

3 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
4 Settlement is entitled to a presumption of fairness. In their moving papers, Plaintiffs contend the
5 Settlement was the product of arm's-length negotiations after extensive litigation, discovery, and
6 exchange of documentation relating to Plaintiffs' claims. The negotiations were facilitated with
7 the assistance of Jeffrey Krivis, Esq., an experienced and well-respected class action mediator.

8 a. With respect to the benefit to the Class Members, Plaintiffs' moving papers
9 indicate the *average* Individual Settlement Share will be about \$1,160.27, and the
10 *highest* Individual Settlement Share will be around \$6,193.97.

11 b. There were no objections to and no requests for exclusion from the Settlement.
12 This is further proof of the fairness of the Settlement.

13 16. Uncashed Checks. Participating Class Members must cash or deposit their
14 Individual Settlement Share checks within one hundred eighty (180) calendar days after the
15 checks are mailed to them. All uncashed settlement checks will be canceled and paid to the
16 California State Controller: Unpaid Wage Fund.

17 17. Modification of Settlement Agreement. The Participating Class Members are
18 authorized, upon approval of the Court, to agree to and adopt amendments to or modifications of
19 the Settlement Agreement, by a written instrument signed by the Parties' counsel or their
20 successor-in-interest. Such amendments or modifications shall be consistent with this Order and
21 Judgment and cannot limit the rights of Participating Class Members under the Agreement.

22 18. Final Accounting and Compliance. The Court sets a final accounting and
23 compliance date for 6/30/23 at 9:00 a.m./p.m. in Department S-26. No later than five
24 (5) court days before final accounting and compliance date, Plaintiffs shall file a declaration
25 regarding compliance.

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19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and Judgment. This Court retains jurisdiction for the administration, interpretation, effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment, and for any other necessary purpose, including, without limitation:

- a. enforcing the terms and provisions of the Settlement and resolving any disputes, claims, or causes of action in the class action that, in whole or in part, are related to or arise out of the Settlement or this Order and Judgment;
- b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and Judgment approving the Settlement, and permanently enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of the Settlement; and
- c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

For the reasons set forth above, the Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments is GRANTED. The Settlement Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8 IT IS SO ORDERED.

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10 DATED: 6/30/22



HONORABLE DAVID COHN
SUPERIOR COURT JUDGE

