

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
3 JUSTIN KACHADOORIAN (SBN 260356)
justin@counselonegroup.com
4 **COUNSELONE, PC**
9301 Wilshire Boulevard, Suite 650
5 Beverly Hills, California 90210
Telephone: (310) 277-9945
6 Facsimile: (424) 277-3727

7 Attorneys for Plaintiff Berenice de la Torre, on behalf of
herself and others similarly situated
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 BERENICE DE LA TORRE, on behalf of
14 herself and others similarly situated,

15 Plaintiff,

16 v.

17 AMERICAN INTERNATIONAL
18 INDUSTRIES, a business entity of unknown
19 form; and DOES 1 through 100, inclusive,

20 Defendants.
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24
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Case No.: 20STCV29551

Assigned for all purposes to:
Hon. David S. Cunningham
Dept. 11

**SUPPLEMENTAL DECLARATION OF
ANTHONY J. ORSHANSKY IN SUPPORT
OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

Continued Preliminary Approval Hearing

Date: March 18, 2022

Time: 10:00 a.m.

Courtroom: 11

Complaint Filed: August 4, 2020

First Amended Complaint Filed: November 24,
2020

Trial Date: None set

1 **SUPPLEMENTAL DECLARATION OF ANTHONY J. ORSHANSKY**

2 I, Anthony J. Orshansky, declare as follows:

3 1. I am an attorney licensed to practice law before all courts of the State of California.
4 I have personal knowledge of the facts herein and, if called as a witness, I could and would
5 competently testify to them.

6 2. I am a shareholder at the law firm of CounselOne, P.C. (“CounselOne”), counsel of
7 record for Plaintiff Berenice de la Torre (“Plaintiff”) in this putative class and representative lawsuit
8 (“Action”) against Defendant American International Industries (“Defendant”; Plaintiff and
9 Defendant are collectively referred herein as the “Parties”).

10 3. I submit this Supplemental Declaration in response to the Court’s January 25, 2022
11 Tentative Ruling (“Ruling”), the Court’s clarifications in response to counsel’s questions regarding
12 the tentative at the hearing on January 26, 2022, the Court’s instructions in its preliminary approval
13 checklist, and in further support of Plaintiff’s Motion for Preliminary Approval of Class and
14 Representative Action Settlement (“PA Motion”), previously filed on November 3, 2021.

15 **RESPONSE TO COURT’S RULING**

16 4. **Re: Class Certification (Item I.C.)**

17 In its preliminary approval checklist, the Court directed as follows: “**Community of**
18 **Interest: Discuss whether class representatives have claims or defenses typical of the class and**
19 **can adequately represent the class** (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435).

- 20 • **In addition, Plaintiff(s) should provide a declaration evidencing that he/she**
21 **understands the obligations of being an adequate class representative, the**
22 **details of what he/she has done or will do to demonstrate the adequacy of**
23 **his/her representation, and the substantial burden he/she will undertake in**
24 **order to represent the putative class in this case. (See *Soderstedt v. CBIZ***
25 ***Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v.***
26 ***Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).”**

27 (a) Plaintiff’s Counsel responds to this item as follows: Plaintiff’s claims are typical of
28 those held by the members of the Class. Like all other Class Members, Plaintiff was a non-exempt

1 hourly employee working for Defendant in California during the Class Period. As alleged, Plaintiff
2 was not compensated for all hours she worked, not provided with legally compliant meal and rest
3 breaks, and required to incur business expenses necessary to perform her job duties without
4 reimbursement. Plaintiff was therefore impacted by the same challenged policies that allegedly
5 injured the Class as a whole and subject to the same defenses forwarded by Defendant as to the
6 Class, thus her claims are therefore typical.

7 (b) Plaintiff hereby submits her declaration as **Exhibit A** hereto. (See Declaration of
8 Berenice de la Torre in Support of Preliminary Approval of Class and Representative Action
9 Settlement, Exhibit A.)

10 5. **Miscellaneous (Item I.E.)**

11 The Court's next item of concern on the checklist states: **"If notice will be given in English
12 only, explain why this is sufficient."**

13 (a) Plaintiff's Counsel responds to this item as follows: The Parties have agreed to
14 provide notice to the Class in both English and Spanish. A large percentage of the workforce speaks
15 Spanish or, otherwise, rely on Spanish as their first or primary language. (See Amended Stipulation
16 of Class And Representative Action Settlement ("Amended Settlement Agreement") attached hereto
17 as **Exhibit B**, ¶ 52(a.) The Amended Settlement Agreement states: "The Parties shall use CPT
18 Group, Inc. as the Settlement Administrator to distribute the Class Notice in both English and
19 Spanish, distribute payments under the Settlement Agreement, handle tax reporting, establish and
20 host a dedicated case settlement website, and field questions with a telephonic hotline." (Amended
21 Settlement Agreement, Exhibit B, ¶ 52(a.))

22 The Court's next item of concern on the checklist states: **"Any agreement that has
23 injunctive relief against a class representative is not appropriate in a class action case. Provide
24 the authority and factual reasons why this case is an exception.**

- 25 • **See ¶ 57.a - Eliminate the language of the release that states that this court will**
26 **enjoin future lawsuits by class members. The court will not issue injunctive**
27 **relief against absent class members. The effectiveness of the release comes from**

1 satisfaction of due process requirements for notice and an opportunity to opt
2 out or be heard.”

3 (b) Plaintiff’s Counsel responds to this item as follows: the Parties have agreed to
4 eliminate the language. Plaintiff clarifies that, because of further amendments to the agreement to
5 address the Court’s concerns, the numbering in the Amended Settlement Agreement has changed.
6 What was formerly ¶ 57(a) as referred to in the Court’s checklist is now ¶ 60(a) in the Amended
7 Settlement Agreement. The *original* Stipulation of Class And Representative Action Settlement
8 with changes in redline (“Redlined Settlement Agreement”), submitted to the Court on November
9 3, 2021, is attached as **Exhibit C** hereto. The amended and final language now reads: “Subject to
10 Final Approval, all Settlement Class Members shall be bound by this Settlement Agreement, the
11 contemplated Final Approval Order and Judgment, and the release of Settlement Class Members’
12 Released Claims and PAGA Group Members’ Released Claims against the Released Parties.”
13 (Amended Settlement Agreement, Exhibit B, ¶ 60(a.))

14 6. **Re: Settlement Agreement – The Basics (Item II.A.)**

15 The Court’s next item of concern on the checklist states: “**Class Definition: Why is the**
16 **‘PAGA Group Member’ definition used in the Notice not provided in the Settlement**
17 **Agreement?**”

18 (a) Plaintiff’s Counsel responds to this item as follows: The Parties have amended the
19 settlement agreement to include the definition of PAGA Group Member(s). (Amended Settlement
20 Agreement, Exhibit B, ¶ 22 [“PAGA Group Member(s)” means all Class Members who worked for
21 Defendant at any time during the PAGA Period.]

22 The Court’s next item of concern on the checklist states: “**Class and Release Period: Will**
23 **the class and release periods extend beyond the preliminary approval? If yes, please explain.**

- 24 • See ¶¶ 7, 23 - Amend the Class Period and PAGA Period definitions and
25 provide specific end dates. The Notice uses the end date of October 15, 2021.”

26 (b) Plaintiff’s Counsel responds to this item as follows: The class and release periods
27 will not extend beyond the preliminary approval, and the agreement has been amended to make this
28 point clearer. The Class Period and the PAGA Period both end on October 15, 2021, which is the

1 same date used in Notice of Pendency of Class And Representative Action Settlement. (See
2 Amended Settlement Agreement, Exhibit B, ¶¶ 7 and 25.)

3 7. **Re: Settlement Agreement – Release of Claims (Item II.B.)**

4 The Court’s next item of concern on the checklist states: “**Scope: The scope of any release**
5 **given by class members must be defined with precision and clarity. Any released claims not**
6 **presented directly in the complaint must be based on the facts alleged in the complaint.**

- 7 • See ¶¶ 32, 44, 57.b - The release of PAGA claims should be separately defined
8 and limited to claims for penalties that were brought or could have been
9 brought based on the facts alleged in Plaintiff’s LWDA letter. See *Amaro v.*
10 *Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537; *Uribe v. Crown*
11 *Building Maintenance Co.* (2021) 70 Cal.App.5th 986, 1005; *Moniz v. Adecco*
12 *USA, Inc.* (2021) 72 Cal.App.5th 56, 82-83.
- 13 • Also, counsel is to provide a copy of the LWDA letter to the Court for review.”

14 (a) Plaintiff’s Counsel responds to this item as follows: The Parties have agreed to
15 narrow the scope of the release given by Class Members to claims, during the Class Period,
16 contained in the operative complaint or claims that could have been asserted based on the facts
17 alleged by Plaintiff in the operative complaint. (See Amended Settlement Agreement, Exhibit B, ¶¶
18 35, 47.) Similarly, the Parties have agreed to narrow the scope of the release given by PAGA Group
19 Members to claims for penalties under the PAGA (codified in California Labor Code §§ 2698, *et*
20 *seq.*), during the PAGA Period, for claims asserted or that could have been asserted based on the
21 facts alleged in Plaintiff’s letter to the LWDA. (See Amended Settlement Agreement, Exhibit B, ¶¶
22 23, 47, 60(b.))

23 (b) On July 24, 2020, Plaintiff submitted an eight-page pre-filing letter pursuant to
24 California Labor Code section 2699 to the LWDA outlining the factual and legal bases for her
25 allegations of wrongdoing on behalf of herself and aggrieved employees, along with mailing a
26 certified copy to Defendant. A true and correct copy of Plaintiff’s LWDA pre-filing notice dated
27 July 24, 2020 is attached as **Exhibit D** hereto.

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The Court’s next item of concern on the checklist states: “**Release Effective Date: Indicate the point in time at which the release will be deemed effective as to the absent class members. If the release will be effective before settlement funds are paid, explain why this is in the best interest of the class.**”

- See ¶ 44 - Modify the effective date of the release to be the date on which Defendant fully funds the settlement.”

(c) Plaintiff’s Counsel responds to this item as follows: The Parties have agreed to modify the effective date of the release to the date Defendant fully funds the settlement. (See Amended Settlement Agreement, Exhibit B, ¶ 47, which now states: “As of the date Defendant fully funds the settlement, Plaintiff and all Class Members who did not opt-out of the settlement, for and in consideration of the Gross Settlement Amount, along with the terms and in undertakings herein, the sufficiency and fairness of which are acknowledged, release . . .”). The *amended* Notice of Pendency of Class And Representative Action Settlement (“Amended Class Notice”), attached hereto as **Exhibit E**, at ¶ III.E. also makes the same change. The *original* Notice of Pendency of Class And Representative Action Settlement with changes in redline (“Redlined Class Notice”), submitted to the Court on November 3, 2021, is attached as **Exhibit F** hereto.

The Court’s next item of concern on the checklist states: “**Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel’s ability to discharge fiduciary duties.**”

- See ¶ 49.d.”

(d) Plaintiff’s Counsel responds to this item as follows: the confidentiality language has been removed. (See Amended Settlement Agreement, Exhibit B, at 52 (b.)) There are no impediments to Class Counsel’s ability to discharge fiduciary duties to the Class.

8. Re: Settlement Agreement – Monetary Terms of Settlement (Item II.C.)

The Court’s next item of concern on the checklist states: “**Payment Formula: Amount and manner of distribution of the compensation to each class member, including the estimated amount each class member will receive and the timeline on which payments will be issued.**”

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- **Why is it proper not to have a separate calculation as to PAGA Penalties? How would it be appropriate for all Class Members to share in the PAGA penalty given the PAGA statute’s applicable statute of limitations?”**

(a) Plaintiff’s Counsel responds to this item as follows: The distribution formulas for payments to Class Members and PAGA Group Members are laid out in the Amended Settlement Agreement and Amended Class Notice. (See Amended Settlement Agreement, Exhibit B, at ¶¶ 49 (d) and (e); Amended Class Notice, Exhibit E, ¶ III.B.) Given the inherent difference in durations of the Class Period and the PAGA Period, each Class Member’s number of workweeks during the Class Period and each PAGA Group Member’s number of pay periods during the PAGA Period are separately stated; it is not true that all Class Members will share in the PAGA penalty. (See Amended Class Notice, Exhibit E, ¶ III.C.) Settlement award amounts for Class Members and PAGA Group Members are separately calculated and stated. (See Amended Class Notice, Exhibit E, ¶ III.D.) The timeline for the issuance of settlement payments is explained in the Amended Settlement Agreement and Amended Class Notice. (See Amended Settlement Agreement, Exhibit B, ¶¶ 11, 59; Amended Class Notice, Exhibit E, ¶ III.B.)

9. **Re: Notice Administration (Item II.D.)**

The Court’s next item of concern on the checklist states: **“Does the content of the notice comply with California Rules of Court, rule 3.766(d)?**

- **Provide information regarding the check-cashing deadline and fund to which uncashed checks will be directed on the Notice.**
- **Does the notice accurately reflect the Court’s current social distancing procedures for attendance at hearings and review of court files? (Counsel should check the Court website for most current information.)**
- **The Notice should inform class members of the option to appear by audio or video at the final approval hearing and cite the Court’s website for directions.”**

(a) Plaintiff’s Counsel responds to this item as follows: The Parties have reviewed the notice and have determined that it complies with California Rules of Court, rule 3.766(d). The Amended Settlement Agreement and Amended Class Notice provide clear and adequate information

1 regarding the check-cashing deadline and identify the *cy pres* recipient to which uncashed checks
2 will be directed. (See Amended Settlement Agreement, Exhibit B, ¶ 59(c); Amended Class Notice,
3 Exhibit E, ¶ III.B.) The Amended Class Notice reflects the most current information, as reflected on
4 the Court’s website, regarding the Court’s current social distancing procedures for attendance at
5 hearings and review of Court files. (See Amended Class Notice, Exhibit E, ¶¶ V, VI.) The Amended
6 Class Notice also provides the Court’s website for updated Covid information protocols. (See
7 Amended Class Notice, Exhibit E, ¶ V.) Further, the Amended Class Notice informs Class Members
8 of their option to appear remotely, by audio and/or video at the final approval hearing and provides
9 the Court’s website for directions. (See Amended Class Notice, Exhibit E, ¶ V.)

10 The Court’s next item of concern on the checklist states: “**How will notice of final judgment**
11 **be given to the class? (Cal. Rules of Court, rule 3.771(b)) (e.g. Posted on administrator’s**
12 **website.)”**

13 (b) Plaintiff’s Counsel responds to this item as follows: Pursuant to the Court’s guidance,
14 the Court’s Final Approval Order and Judgment will be posted on the Settlement Administrator’s
15 website pursuant to Cal. Rules of Court, rule 3.771(b). (See Amended Settlement Agreement,
16 Exhibit B, ¶ 60(c); Amended Class Notice, Exhibit E, ¶ VI.)

17 The Court’s next item of concern on the checklist states: “**Confirm the settlement**
18 **agreement and notice are consistent.”**

19 (c) Plaintiff’s Counsel responds to this item as follows: Plaintiff’s Counsel confirms that
20 the Amended Settlement Agreement and Amended Class Notice are consistent.

21 **10. Re: Responses to Notice (Item II.E.)**

22 The Court’s next item of concern on the checklist states: “**Will class members who receive**
23 **re-mailed notices be given an extension?”**

24 (a) Plaintiff’s Counsel responds to this item as follows: Yes, Class Members who receive
25 re-mailed notices will be given an extension. The Amended Settlement Agreement provides Class
26 Members will have until the Response Deadline to dispute workweeks, request exclusion or submit
27 an objection the settlement. (See Amended Settlement Agreement, Exhibit B, ¶¶ 32, 54(a), 56(a),
28 58(a.)) The Response Deadline is defined as “the last date on which Class Members may submit an

1 opt-out/request for exclusion or objection to the settlement, which shall be the later of either sixty
2 (60) days after the Settlement Administrator mails the original Class Notice to Class Members or
3 forty five (45) days after the Settlement Administrator re-mails any Class Notice which was returned
4 to the Settlement Administrator.” (Amended Settlement Agreement, Exhibit B, ¶ 32.)

5 The Court’s next item of concern on the checklist states: **“Delete all language indicating**
6 **that class members may only be heard at final approval if they have complied with all objection**
7 **procedures or that they must use specific language to request exclusion. The court will hear**
8 **from any class member who attends the final approval hearing and asks to speak regarding**
9 **his or her objection. Modify the notice accordingly.**

- 10 • See ¶ 55 and Notice pg. 5 - Make clear that the court will also hear from any class
11 member who attends the final approval hearing and asks to speak *regardless* of whether
12 they submitted a written objection. Class Members shall not be required to submit a
13 notice of intent to appear at the hearing.”

14 (a) Plaintiff’s Counsel responds to this item as follows: All language indicating that Class
15 Members may only be heard at the final approval hearing if they have complied with all objection
16 procedures or that they must use specific language to request exclusion have been deleted. (See
17 Amended Settlement Agreement, Exhibit B, ¶¶ 56(b), 58(b), 58(c); Amended Class Notice, Exhibit
18 E, ¶¶ IV.B, IV.C.) The Amended Settlement Agreement and Amended Class Notice state that no
19 specific language is required in the request for exclusion provided it is sufficiently clear that the
20 Class Member desires to be excluded from the class settlement. (See Amended Settlement
21 Agreement, Exhibit B, ¶ 56(b); Amended Class Notice, Exhibit E, ¶ IV.B.) The Amended
22 Settlement Agreement and Amended Class Notice also state that the Court will hear from any Class
23 Member who attends the final approval hearing and asks to speak regardless of whether they
24 submitted a written objection. (See Amended Settlement Agreement, Exhibit B, ¶ 58(c); Amended
25 Class Notice, Exhibit E, ¶ IV.C.)

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11. **Re: Cy Pres Distribution (Item II.F.)**

The Court's next item of concern on the checklist states: **"Provide declarations by all counsel and parties disclosing any interest or involvement in the governance or work of the cy pres recipient."**

(a) Plaintiff's Counsel responds to this item as follows: At the hearing on January 26, 2022, the Court agreed with counsel that a statement or representation in the Amended Settlement Agreement is sufficient in lieu of separate declarations from counsel and parties. Accordingly, the settlement agreement has been amended to reflect that all Parties and their counsel represent that they do not have any interest or involvement in the governance or work of the *cy pres* recipient. (See Amended Settlement Agreement, Exhibit B, ¶ 59(c.)) Additionally, Plaintiff's Counsel hereby represents under penalty of perjury that he does not have any interest or involvement in the governance or work of the *cy pres* recipient.

12. **Re: Exhibits to the Motion (Item III.)**

The Court's next item of concern on the checklist states: **"Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code, § 2699, subd. (I)(2).)"**

(a) Plaintiff's Counsel responds to this item as follows: On January 26, 2022, Plaintiff submitted to the California Labor and Workforce Development Agency ("LWDA") the following: 1) the Settlement Agreement as presented to the Court for preliminary approval on November 3, 2021; and 2) the Notice of Motion and Motion For Preliminary Approval and Memorandum of Points and Authorities as presented to the Court for preliminary approval on November 3, 2021. A true and correct copy of the e-mailed confirmation from the LWDA entitled "Thank you for your Proposed Settlement Submission" dated January 26, 2022 is attached as **Exhibit G** hereto. In addition, a true and correct copy of a screenshot of PAGA Case Details taken on January 26, 2022 showing the aforementioned items for this case as posted to the LWDA website is attached as **Exhibit H** hereto.

On February 23, 2022, Plaintiff submitted to the LWDA the following: 1) this declaration, and; (2) the Amended Settlement Agreement. A true and correct copy of the e-mailed confirmation from the LWDA entitled "Thank you for your Proposed Settlement Submission" dated February 23,

2022 is attached as **Exhibit I** hereto. In addition, a true and correct copy of a screenshot of PAGA Case Details taken on February 23, 2022 showing the aforementioned items for this case as posted to the LWDA website is attached as **Exhibit J** hereto.

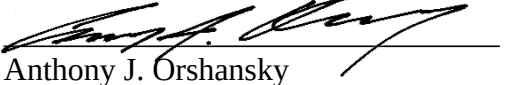
The Court's next item of concern on the checklist states: "**If the Settlement Agreement is modified pursuant to this checklist, please submit both a red-lined copy showing changes made as well as a final version signed by all parties. Do not submit an addendum in lieu of a full amended settlement agreement including all operative settlement terms.**"

- **Modify notice to match any alterations to the Settlement Agreement."**

(b) Plaintiff's Counsel responds to this item as follows: The Settlement Agreement and Class Notice have been amended to comply with the Court's preliminary approval checklist. The Amended Settlement Agreement is attached as Exhibit B hereto. The Redlined Settlement Agreement is attached as Exhibit C hereto. The Amended Class Notice is attached as Exhibit E hereto. The Redlined Class Notice is attached as Exhibit F hereto.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of February, 2022, at Beverly Hills, California.


Anthony J. Orshansky