

01/05/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Aspiras Deputy

DOUGLAS HAN (SBN 232858)
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

VICTOR ACOSTA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

TROJAN BATTERY COMPANY, LLC, a
Delaware limited liability company; TROJAN
BATTERY HOLDINGS, LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 21STCV02804

Assigned for All Purposes to:
Honorable William F. Highberger
Department 10

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 5, 2024
Hearing Time: 11:00 a.m.
Hearing Place: Department 10

Complaint Filed: January 25, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Victor Acosta's ("Plaintiff")
2 Motion for Final Approval of Class Action and PAGA Settlement, and considering the papers
3 submitted in support of the motion, including the Class Action and PAGA Settlement Agreement
4 and Class Notice ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS**
5 **AND ORDERS:**

6 Plaintiff and Defendant Trojan Battery Company, LLC ("Defendant") entered the
7 Settlement Agreement on or about April 11, 2023 to settle this lawsuit.

8 The Court entered an order dated July 21, 2023 preliminarily approving the settlement of
9 this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure section
10 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members, providing
11 Class Members with an opportunity to object to the Settlement or exclude themselves from the
12 Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on January 5, 2024 to determine whether to
14 give final approval to the Settlement of this lawsuit.

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

19 2. Jurisdiction. For purposes of the settlement, because adequate notice has been
20 disseminated and the Class has been given the opportunity to request exclusion, the Court has
21 personal jurisdiction with respect to the claims of all Class Members. The Court has subject
22 matter jurisdiction over this lawsuit, including jurisdiction to approve the Settlement and grants
23 final certification of the Class.

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1 3. Final Class Certification. For purposes of the settlement, the Court finds the
2 Class satisfies all applicable requirements of Code of Civil Procedure section 382, California
3 Rule of Court 3.769, and due process. For purposes of the settlement the Court certifies the Class
4 consisting of all current and former hourly-paid or non-exempt employees of Defendant within
5 the State of California at any time during the period from July 28, 2016 to December 31, 2022
6 (“Class,” “Class Members,” and “Class Period”). There are nine hundred fifty-nine (959) Class
7 Members who did not submit valid and timely Requests for Exclusion from the Settlement
8 (“Participating Class Members”).

9 4. Adequacy of Representation. For purposes of the settlement, the Court finds
10 Class Counsel fully and adequately represented the Class for the purposes of entering and
11 implementing the Settlement and satisfied the requirements of Code of Civil Procedure section
12 382.

13 5. Class Notice. The Court finds the Court Approved Notice of Class Action and
14 PAGA Settlement and Hearing Date for Final Court Approval (“Class Notice”) and its
15 distribution to Class Members were implemented pursuant to the Settlement and this Court’s
16 Preliminary Approval Order. The Court finds for purposes of the settlement the Class Notice:

- 17 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
18 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
19 Agreement and their rights; (iii) their right to object to any aspect of the
20 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
21 Agreement; (v) their right to receive settlement payments; (vi) their right to
22 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
23 judgment in this lawsuit on all Participating Class Members;
- 24 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
25 section 382, California Rule of Court 3.769, and due process;
- 26 c. constitutes the best practicable notice to Class Members under the circumstances
27 of this lawsuit; and
- 28 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

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

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

9 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
10 Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
11 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
12 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
13 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
14 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
15 that were or could have been raised in this lawsuit and are encompassed by the Released Class
16 Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims. The Settlement
17 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
18 Class Members who have submitted timely requests for exclusion, if any.

19 9. Release by Participating Class Members Who Are Not Aggrieved Employees.
20 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds
21 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
22 Participating Class Members, on behalf of themselves and their former and present
23 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
24 Parties from the Released Class Claims.

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1 a. Release by Non-Participating Class Members Who Are Aggrieved Employees.

2 Effective on the date when Defendant fully funds the entire Gross Settlement
3 Amount and funds all employer payroll taxes owed on the Wage Portion of the
4 Individual Class Payments, all Non-Participating Class Members who are
5 Aggrieved Employees are deemed to release, on behalf of themselves and their
6 former and present representatives, agents, attorneys, heirs, administrators,
7 successors, and assigns, the Released Parties from the Released PAGA Claims.

8 b. Plaintiff's Release. Effective on the date when Defendant fully funds the entire

9 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
10 Portion of the Individual Class Payments, Plaintiff and his former and present
11 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
12 assigns generally, release and discharge Released Parties from Plaintiff's Release.

13 c. Released Parties. The Released Parties include Defendant and each of its former

14 and present directors, officers, shareholders, owners, members, attorneys,
15 insurers, predecessors, successors, assigns, subsidiaries, affiliates, including
16 Trojan Battery Holdings, LLC and C&D Technologies, Inc., and all of their
17 former and present directors, officers, shareholders, owners, members, attorneys,
18 insurers, predecessors, successors, assigns, subsidiaries, affiliates, and any
19 individual or entity which could be jointly liable with Defendant.

20 10. Class Representative Service Payment. For purposes of the settlement, the Court

21 finds the Class Representative Service Payment of \$10,000, to be paid by Defendant to Plaintiff
22 out of the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative
23 Service Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

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a. The rationale for making enhancement payments is class representatives should be compensated for the expense and risk they incurred in conferring a benefit on the Class. Criteria courts consider include: (1) risk to the class representatives in commencing suit; (2) notoriety and personal difficulties; (3) amount of time and effort spent by the class representatives; (4) duration of the litigation; and (5) personal benefit (or lack thereof) enjoyed by class representatives.

b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the risks inherent in the services as the class representative, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Service Payment of \$10,000 to Plaintiff.

11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

For purposes of the settlement, the Court finds the Class Counsel Fees Payment of ~~\$962,500~~ ^{\$920,000.00}, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. In addition, the Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs incurred of \$20,000, to be paid by Defendant 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 Agreement. Defendant 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 Plaintiff or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or related in any manner to this lawsuit, Settlement Agreement, settlement administration, and/or Released Class Claims and Released PAGA Claims.

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- 1 a. The Court has an independent right and responsibility to review the Class Counsel
2 Fees Payment and only award so much as it determines reasonable. (See
3 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
4 127-28.) The Class Counsel Fees Payment of \$962,500 is thirty-five percent
5 (35%) of the common fund created for the benefit of the Class and is supported by
6 use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.*
7 (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk
8 undertaken, difficult nature of this litigation, skills required, percentage fees
9 award in previous and other cases, and contingent fees charged in the
10 marketplace, the Court finds the Class Counsel Fees Payment is consistent with
11 the marketplace, is reasonable, and is approved.
- 12 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
13 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
14 seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class
15 Counsel expended \$20,282.01 in litigation costs, and such costs were reasonable.
16 Because the above-mentioned costs exceed the maximum amount permitted, the
17 Court approves the payment of the Class Counsel Litigation Expenses Payment of
18 \$20,000 from the common fund for the reimbursement of Class Counsel's
19 litigation costs.

20 12. Administration Expenses Payment. For purposes of the settlement, the Court
21 finds Administration Expenses Payment of \$13,000, to be paid by Defendant to the
22 Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The
23 Administration Expenses Payment are to be paid pursuant to terms and provisions set forth in the
24 Settlement Agreement.

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1 a. The Court reviewed the declaration of Laura Singh from CPT Group, Inc., the
2 Court-approved Administrator. The Court finds notice was provided to the Class
3 pursuant to the Preliminary Approval Order, constitutes the best practicable notice
4 to the Class, and satisfied due process. Thus, the Court approves the payment of
5 the Administration Expenses Payment of \$13,000 for the Administrator's services
6 in administering the Settlement.

7 13. PAGA Penalties. For purposes of the settlement, the Court finds the PAGA
8 Penalties of \$75,000, seventy-five percent (75%) of which (\$56,250) will be paid to the LWDA
9 out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$18,750) shall be
10 distributed to Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The
11 PAGA Penalties is to be paid pursuant to the terms and provisions set forth in the Settlement
12 Agreement.

13 14. Funding the Settlement. Defendant shall fully fund the Gross Settlement Amount
14 and amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds
15 to the Administrator no later than fourteen (14) days after the Effective Date. Within fourteen
16 (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail
17 settlement checks to the appropriate persons and entities.

18 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
19 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
20 Settlement was the product of arm's-length negotiations following extensive litigation,
21 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
22 Tripper Ortman, an experienced and well-respected mediator.

23 a. The fairness of the Settlement is demonstrated by there being no objections to and
24 no requests for exclusion from the Settlement.

25 b. The fairness of the Settlement is further illustrated by the gross *average*
26 Individual Class Payment being approximately \$1,740.88, and the gross *highest*
27 Individual Class Payment being about \$6,247.52.

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1 16. Uncashed Checks. Class Members must cash or deposit their settlement checks
2 within one hundred eighty (180) days after the checks are mailed to them. Uncashed settlement
3 checks will be canceled and transmitted to the California Controller's Unclaimed Property Fund
4 in the name of the Class Member.

5 17. Modification of Agreement. The Participating Class Members are hereby
6 authorized to agree to and adopt amendments to or modifications of the Agreement by an express
7 written instrument signed by all Parties or their representatives and approved by the Court. Such
8 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
9 the rights of Participating Class Members under the Agreement.

10 18. Final Accounting and Compliance. The Court sets a ^{NACR re funding} ~~compliance hearing~~ on
11 ~~1/10/25 9 a.m.~~ ~~August 30, 2024~~ in Department 10. Within five (5) court days before this hearing, Plaintiff shall
12 file a compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance
13 status report shall specify the total amount paid to Class Members and the residual of the
14 unclaimed settlement funds that will be paid to the entity identified as the recipient of such funds
15 in the Settlement Agreement.

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

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

1 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
2 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is
3 GRANTED. The Administrator is directed to carry out the terms of the Agreement forthwith.

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

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12 IT IS SO ORDERED.

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14 DATED: 01/05/2024



HONORABLE WILLIAM F. HIGHBERGER
SUPERIOR COURT JUDGE

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On January 8, 2024, I served the foregoing document described as

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

Executed on January 8, 2024, at Pasadena, California.

Betty Marie Lomb

Bitty Minnis-Lemley