

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Plaintiff

FILED
ALAMEDA COUNTY

OCT 13 2022

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

TOM TESENE, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

BOSSARD, INC., a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: RG21088612

Assigned for All Purposes to:
Honorable Frank Roesch
Department 17

CLASS ACTION

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

[Reservation ID: 698773652901]

Hearing Date: ~~September 29, 2022~~ **October 13**
Hearing Time: 3:30 p.m.
Hearing Place: Department 17

Complaint Filed: February 9, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Tom Tesene's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Amended Joint Stipulation and Settlement Agreement
4 ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS:

5 Plaintiff and Defendant Bossard, Inc. ("Defendant") entered the Settlement Agreement on
6 or about April 27, 2022, to settle this class action lawsuit.

7 The Court entered an Order dated May 6, 2022 preliminarily approving the settlement of
8 this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
9 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
10 Members, scheduling a Final Approval Hearing on September 29, 2022, and providing Class
11 Members with an opportunity to object to the Settlement or exclude themselves from the Class.

12 The Court held a Fairness Hearing on September 29, 2022, to determine whether to give
13 final approval to the Settlement of this class action lawsuit.

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

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

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
25 exempt employees of Defendant within the State of California at any time during the period from
26 February 9, 2017, to March 3, 2022 ("Class," "Class Members," and "Class Period"). There are
27 sixty-eight (68) Class Members who did not submit valid and timely requests to exclude
28 themselves from the Class portion of the Settlement ("Participating Class Members").

1 4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-
2 Gharajeh, and Talia Lux of Justice Law Corporation have fully and adequately represented the
3 Class for purposes of entering and implementing the Settlement and have satisfied the
4 requirements of Code of Civil Procedure section 382.

5 5. Notice Packet. The Court finds the Notice of Class Action and PAGA Settlement
6 (“Notice”) and the Election Not to Participate In (“Opt Out” From) Class Action Settlement
7 (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its distribution to Class
8 Members were implemented pursuant to the Settlement and this Court’s Preliminary Approval
9 Order. The Court also finds the Notice Packet:

10 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
11 the pendency of the class action lawsuit; (ii) the material terms and provisions of the Settlement
12 and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to
13 exclude themselves from the Settlement; (v) their right to claim an Individual Settlement Share;
14 (vi) their right to appear at the Final Approval Hearing; and (vii) the binding effect of the orders
15 and judgment in the class action lawsuit on all Participating Class Members;

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

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

20 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

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

27 ///

28 ///

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

11 8. Release of Claims. Upon final approval by the Court, Plaintiff and the
12 Participating Class Members will fully and finally release and discharge the Released Parties
13 from the Released Claims.

14 a. Effect of PAGA Settlement. Upon final approval by the Court, Plaintiff, the
15 California Labor and Workforce Development Agency ("LWDA"), and any other
16 representative, proxy, or agent thereof, including, but not limited to, the Eligible
17 Aggrieved Employees, will fully and finally release and discharge the Released
18 Parties from the PAGA Released Claims. Eligible Aggrieved Employees may not
19 opt out of the PAGA portion of the Settlement, will still be mailed checks for their
20 portions of the PAGA Payment, and shall still release the PAGA Released Claims
21 regardless of the submission of a valid and timely request for exclusion.

22 b. Plaintiff's Release of Claims and General Release. Upon final approval by the
23 Court, in addition to the Released Claims and PAGA Released Claims, Plaintiff
24 will provide a general release to the Released Parties. Moreover, Plaintiff
25 expressly waives and relinquishes, to the fullest extent permitted by law, the
26 provisions, rights, and benefits of section 1542 of the Civil Code, or any other
27 similar provision under federal or state law that purports to limit the scope of a
28 general release.

1 c. Released Parties. The Released Parties include Defendant and its present and
2 former parent companies, present owners, former owners, subsidiaries,
3 shareholders, officers, directors, employees, agents, attorneys, insurers,
4 successors, and assigns, and any individual or entity which could be jointly liable
5 with Defendant, or any of them, including, but not limited to, Bossard US
6 Holdings, Inc. and Bossard North America, Inc.

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

9 10. Class Representative Enhancement Payment. The Court finds the Class
10 Representative Enhancement Payment of \$10,000, to be paid by Defendant to Plaintiff out of the
11 Gross Settlement Amount, to be reasonable and appropriate. Class Representative Enhancement
12 Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

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

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

23 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
24 of \$99,666.67, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to
25 be reasonable and appropriate. The Court further finds the Cost Award as reimbursement for
26 actual litigation costs incurred of \$10,112.61, to be paid by Defendant to Class Counsel out of
27 the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be
28 paid pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be

1 required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
2 Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also
3 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
4 incurred by Plaintiff or Class Members in connection with or related in any manner to the class
5 action and PAGA lawsuit, the Settlement, the settlement administration, and/or the Released
6 Claims and PAGA Released Claims.

7 a. The Court has an independent right and responsibility to review the requested
8 Attorney Fee Award and only award so much as it determines reasonable. (See
9 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
10 127-28.) The Attorney Fee Award requested by Class Counsel of \$99,666.67 is
11 one-third (1/3) of the common fund created for the benefit of the Class and is
12 supported by use of the percentage-fee method.¹ (See *Laffitte v. Robert Half*
13 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the exceptional results
14 achieved, financial risk undertaken, novel and difficult nature of this litigation,
15 skills required, percentage fees award in previous and other cases, and contingent
16 fees charged in the marketplace, the Court finds the requested Attorney Fee
17 Award is consistent with the marketplace, is reasonable, and is approved.

18 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
19 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
20 seek reimbursement of up to \$15,000 in litigation costs. The Court finds Class
21 Counsel expended \$10,112.61 in litigation costs, and such costs were reasonable.
22 Thus, the Court approves the payment of the Cost Award of \$10,112.61 from the
23 common fund for the reimbursement of Class Counsel's litigation costs.

24 ///

25 ///

26
27 ¹ The Parties agreed to request an Attorney Fee Award of one-third (1/3) of the Gross
28 Settlement Amount instead of thirty-five percent (35%) of the Gross Settlement Amount as
reflected in the Settlement Agreement.

1 12. Administration Costs. The Court finds Administration Costs of \$3,499, to be paid
2 by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be
3 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
4 provisions set forth in the Settlement Agreement.

5 a. The Court reviewed the declaration of Christina Fowler from Simpluris, Inc.
6 (“Simpluris”), the Court-approved Settlement Administrator. The Court finds
7 notice was provided to the Class pursuant to the Preliminary Approval Order, the
8 notice constitutes the best practicable notice to the Class, and the notice satisfied
9 due process. Thus, the Court approves the payment of the Administration Costs of
10 \$3,499 for Simpluris’ services in administering the Settlement.

11 13. PAGA Payment. The Court finds the PAGA Payment of \$20,000, seventy-five
12 percent (75%) of which (\$15,000) will be distributed to the LWDA out of the Gross Settlement
13 Amount and twenty-five percent (25%) of which (\$5,000) shall be distributed to Eligible
14 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment
15 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

16 14. Funding of the Settlement. Within fourteen (14) calendar days of the Final
17 Approval Date, Defendant shall deposit the Gross Settlement Amount of \$299,000 into the
18 Qualified Settlement Fund. Defendant shall also at this time provide any tax information that the
19 Settlement Administrator may need to calculate each Participating Class Member’s Individual
20 Settlement Share. Within fourteen (14) calendar days after the Effective Final Settlement Date,
21 the Settlement Administrator shall calculate and pay all payments due under the Agreement.

22 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
23 Settlement is entitled to a presumption of fairness. In his moving papers, Plaintiff contends the
24 Settlement was the product of arm’s-length negotiations following extensive litigation,
25 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
26 Kelly A. Knight, Esq., an experienced and well-respected class action mediator.

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

1 b. The fairness of the Settlement is also illustrated by the *average* Individual
2 Settlement Share being approximately \$2,290.03, and the *highest* Individual
3 Settlement Share being about \$7,922.15.

4 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved
5 Employees must cash or deposit their settlement checks within one hundred eighty (180)
6 calendar days after the checks are mailed to them. Uncashed settlement checks will be canceled
7 and paid to the *cy pres* recipient State Bar Impact Fund. The *cy pres* recipient shall use such
8 funds to further the purposes of the underlying class action or causes of action, or to promote
9 justice for all Californians. Distribution to the *cy pres* recipient will only occur after, not before,
10 approval of the final accounting.

11 17. Modification of Settlement Agreement. The Participating Class Members are
12 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
13 modifications of the Settlement Agreement by an express written instrument signed by counsel
14 for all Parties or their successors-in-interest. Such amendments or modifications shall be
15 consistent with this Order and Judgment and cannot limit the rights of Participating Class
16 Members under the Settlement Agreement.

17 18. Final Accounting and Compliance. The Court sets a final accounting and
18 compliance hearing for May 11, 2023 at 3:30 p.m. in Department 17. No later than five (5) court
19 days before this hearing, Plaintiff shall file a declaration regarding compliance.

20 a. Holdback Provision. Ten percent (10%) of the Attorney Fee Award (\$9,966.67)
21 shall be held in an interest-bearing account, maintained by the Settlement
22 Administrator, pending the submission and approval of a final compliance status
23 report after completion of the distribution process.

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

28 ///

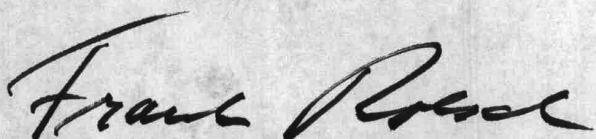
- 1 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
2 claims, or causes of action in the class action that, in whole or in part, are related
3 to or arise out of the Settlement or this Order and Judgment;
4 b. entering such additional orders as may be necessary or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

10 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
11 Award, and Class Representative Enhancement Payment is GRANTED. The Settlement
12 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

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

20
21 IT IS SO ORDERED.

22
23 DATED: 10/13/2022

24 
HONORABLE FRANK ROESCH
SUPERIOR COURT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 manderson@justicelawcorp.com

On October 20, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Tesene v. Bossard, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-812056-20**
Court Case No.: RG21088612
Alameda 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 October 20, 2022, at Pasadena, California.



Mariah Anderson