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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

KEVIN BECERRA, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

HUGO BOSS RETAIL, INC., a Delaware
Corporation; and DOES 1 through 50, inclusive

Defendants.

Case No. 37-2021-00002933-CU-OE-CTL

**REVISED ~~PROPOSED~~ ORDER
GRANTING FINAL APPROVAL FOR
CLASS SETTLEMENT**

Date: June 24, 2022
Time: 8:30 a.m.
Dept.: C-65

1 On June 24, 2022, Plaintiff's Motion for Final Approval of Class Action Settlement,
2 Attorneys' Fees and Expenses, and Incentive Award came before the Court, in Department C-65, for
3 hearing pursuant to the Order of this Court, dated December 23, 2021 ("Preliminary Approval
4 Order"), on the application of Plaintiff Kevin Becerra ("Plaintiff") and the Certified Class for
5 approval of the Settlement set forth in the Joint Stipulation of Class Action and PAGA Settlement
6 (the "Stipulation"). Full and adequate notice having been given to the Class as required in the
7 Court's Preliminary Approval Order, and the Court having considered all papers filed and
8 proceedings held herein and otherwise being fully informed in the premises and good cause
9 appearing therefor,

10 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

11 1. This Order incorporates by reference the definitions in the Stipulation, and all
12 capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

13 2. This Court has jurisdiction over the subject matter of the Action and over all parties
14 to the Action, including all Class Members.

15 3. The Motion for final approval is granted. The Court approves the settlement as fair,
16 reasonable and adequate. The Court makes the following awards and approves the following
17 payments:

18 a. One Hundred Fifteen Thousand Five Hundred Dollars (\$115,500.00) in attorneys'
19 fees and \$11,165.72 (eleven thousand one hundred and sixty five dollars and
20 seventy two cents) in costs to Class Counsel;

21 b. \$5,000.00 (five thousand dollars) as an Enhancement Award to Plaintiff Kevin
22 Becerra as the Class Representative; and,

23 c. \$9,664.91 (nine-thousand and six hundred and sixty four dollars and ninety one
24 cents) in Settlement Administrator's Fees to the claims administrator Simpluris.

25 4. In accordance with the Settlement and the terms set forth in this order, this Order
26 shall not be deemed a judgment in favor of Class Members or any them and shall not constitute an
27 obligation for direct compensation of any one or any number of the Class Members, but rather it
28

1 simply approves and undertakes to monitor the execution of the settlement between the Parties.
2 Except for the payment due under the Stipulation, the parties are each to bear their own costs and
3 attorneys' fees. The Court approves the Stipulation and Defendant Hugo Boss Retail, Inc.
4 ("Defendant"), and the Released Parties are discharged from all Released Claims in accordance with
5 the terms of the Stipulation.

6 5. In this wage and hour class action lawsuit, Plaintiff sued Defendant for a variety of
7 Labor Code violations. The operative complaint alleges that Defendant failed to pay minimum
8 wages and overtime, failure to provide meal and rest breaks, failure to pay wages under Fair Labor
9 Standards Act ("FLSA") failed to provide accurate wage statements, failure to provide suitable
10 seating, failure to keep required payroll records, failed to pay final wages when due, committed
11 unfair business practices under California's Unfair Competition Law ("UCL"), and violated the
12 Private Attorneys General Act of 2004 ("PAGA"), all in violation of California law. The operative
13 complaint seeks recovery of unpaid minimum wages and overtime, failure to pay wages under Fair
14 Labor Standards Act, premium pay for penalties for improper wage statements, waiting time
15 penalties, restitution under the UCL, penalties under Labor Code § 2699 *et seq.*, prejudgment
16 interest, post-judgment interest, and attorneys' fees and costs. Defendant answered the Complaint
17 and denied all of Plaintiff's claims and maintained that it complied with all applicable laws.

18 6. The parties settled this matter at mediation and thereafter sought and obtained
19 preliminary approval of the class action settlement on December 23, 2021. Defendant made and
20 makes no admission of liability and none shall be inferred from the Stipulation or entry of judgment.
21 Neither this order nor the Stipulation shall be used or submitted into evidence in any proceeding or
22 action, except for the sole purpose of enforcing the terms hereof.

23 7. Simpluris is providing settlement administration services for this settlement.
24 (Declaration of Lindsay Kline with Respect to Notification with the Final Approval Motion, ¶ 1.) On
25 January 21, 2021, Simpluris received the class information from Defendant; the list contained 344
26 individual Class Members. (*Id.* at ¶ 6.) Simpluris conducted a search of the NCOA to update
27 addresses and, on February 8, 2022, mailed the Notice Packet to all Class Members. (*Id.* at ¶¶ 6, 7.)

1 Simpluris forwarded Notice Packets returned with forwarding addresses and performed skip
2 searches on all other returned mail. (*Id.* at ¶¶ 7-8.) Ultimately, 7 Notice Packets were undeliverable.
3 (*Id.* at ¶ 9.) Simpluris received no objections, no request for exclusion, and one dispute. (*Id.* at ¶¶ 11,
4 -13.) Based on the foregoing, the Court finds that the notice provided to Class Members conforms to
5 due process requirements.

6 8. At the time of preliminary approval, Class Counsel's claim that Defendant failed to
7 pay minimum wage/overtime claim were valued in terms of maximum exposure at \$720,835.50
8 (Yeremian Declaration re: Preliminary Approval, at ¶ 27.) The meal and rest break violations were
9 each valued at \$230,667.00. (*Id.* at ¶ 31, 33.) The paystub violations were valued at \$671,300. (*Id.* at
10 ¶ 36.) The claim for failure to pay final wages was valued at \$820,512. (*Id.* at ¶ 40.) The claim under
11 Labor Code § 2699 *et seq.* was valued at \$671,300 (*Id.* at ¶ 44.)

12 9. Defendant has agreed to settle for the non-reversionary amount of \$369,950.00 all in,
13 with no additional sums being due from Defendant for damages, costs, attorneys' fees, contributions,
14 reimbursements or for any other reason). According to the claims administrator's calculations, the
15 average settlement payment will be approximately \$291.55 per Class Member (Kline Declaration, ¶
16 16.)

17 10. Class Counsel conducted an investigation that included formal and informal
18 discovery, reviewed time records, reviewed Plaintiff's documents, and formed damage models based
19 on all of these. (Yeremian Declaration re: Preliminary Approval, ¶ 12.) The parties also mediated
20 this case with Ann Kotlarksi, a respected and highly experienced mediator in wage and hour class
21 actions. In connection with mediation and through discussions with counsel for Defendant, Class
22 Counsel also discussed all aspects of the case, including the risks of litigation and the risks to both
23 parties of proceeding with a motion for class certification as well as the law relating to unpaid
24 wages. (Yeremian Declaration re: Preliminary Approval, ¶ 14.)

25 11. Class Counsel has experience with wage and hour class litigation. (Yeremian
26 Declaration re: Preliminary Approval, ¶¶ 3-9.) He is of the opinion that this settlement is in the best
27 interest of the class (Yeremian Declaration re: Final Approval, ¶ 6.) and provides substantial benefit
28

1 to Class Members. (Id. at ¶ 8.)

2 12. The class reacted very positively with 100% participation rate. (Yeremian Declaration
3 re: Final Approval, ¶ 11)

4 13. On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final
5 approval is warranted.

6 14. Class Counsel requests costs in the amount of \$11,165.72. (Yeremian Declaration re:
7 Final Approval, ¶ 29, and Exhibit F thereto.) Class Counsel's actual costs, totaling \$11,165.72,
8 consist of filing fees, mediation fees, court appearances, copying, filing and service. Class Counsel's
9 costs include \$1,488.09 in Settlement Administration Costs. (*Id.*) At the time of the Settlement, the
10 Parties estimated that the Settlement Administration Costs would not exceed \$9,664.91. However,
11 the original settlement administration bid did not include the additional 243 Class Members that
12 would be included in the settlement. The Settlement provides for reimbursement to Counsel of up to
13 \$15,000.00 (fifteen thousand dollars) and Counsel hereby requests \$11,165.72 (eleven thousand one
14 hundred and sixty five dollars and seventy two cents) which were all reasonably incurred in the
15 litigation of this action. These costs appear reasonable and necessary to the conduct of the litigation.
16 Further, as with the fee requests, the maximum cost request was disclosed to Class Members and
17 deemed unobjectionable. For these reasons, the cost request is granted in the amount of \$11,165.72.

18 15. Claims administrator Simpluris requests administration costs of \$9,664.91. Based
19 upon the work performed and yet to be performed, and the fact that the class was provided notice of
20 up to \$9,664.91 for claims administration expense and none objected, the request for administration
21 costs of \$9,664.91 is granted.

22 16. The Court also approves the payment to the Labor and Workforce Development
23 Agency ("LWDA") in the amount of \$18,750.00 (out of \$25,000.00 as allocated to the claim under
24 the California Private Attorneys General Act).

25 17. All Parties, including each and all Class Members, are bound by this Final Approval
26 Order and by the Stipulation. All Class Members shall be deemed to have entered into the
27 Stipulation and the releases provided therein. Defendant shall have no obligation to pay any sums in
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1 excess of the \$369,950.00 settlement payment set forth in the Stipulation (save and except for the
2 additional employer payroll taxes associated therewith).¹ Other than as provided in the Stipulation,
3 Defendant shall have no obligation after entry of judgment to pay any sum to any person, whether
4 for costs, attorneys' fees, Class Member reimbursement or contribution, as a result of entry of
5 judgment.

6 18. The Court previously certified the Action as a class action under California Code of
7 Civil Procedure section 382. The Class is defined as follows:

8 a. "Participating Class Members:" all non-exempt hourly employees who were employed by
9 Defendant in California during the Class Period.

10 b. "Class Period:" is defined as May 21, 2018 through December 21, 2021.

11 19. Excluded from the Class would have been those persons who validly requested
12 exclusion in accordance with the requirements set forth in the Preliminary Approval Order.

13 20. The certified Class continues to meet all the requirements of California Code of Civil
14 Procedure section 382, as already found, and for the reasons set forth, in the Court's Preliminary
15 Approval Order.

16 21. Plaintiff Kevin Becerra is the Court-appointed Class Representative for the Claims
17 Class.

18 22. David Yeremian of the law firm David Yeremian & Associates, Inc. is the Court-
19 appointed Class Counsel.

20 23. As set forth in the Stipulation any checks issued to Class Members will expire one
21 hundred and eighty (180) days from the date they are issued by the Claims Administrator and any
22 uncashed checks will be will be distributed pursuant to Cal. Code Civ. Proc. § 384(b) to CASA of
23

24
25 ¹ Although the Settlement Gross Fund was originally for \$350,000, during administration of the class notice the
26 administrator informed the parties that there were 17,354 pay periods – 15.7% pay periods over the estimate of 15,000
27 and the number of Class Members was 693 and not 450. (Yeremian FA Decl., ¶ 7.) Per the Settlement "If the total
28 number of workweeks increases by more than 10% as of the date of Preliminary Approval, then there shall be a
corresponding pro-rata increase in the Net Settlement Amount". (See Yeremian PA Decl Exh. 1, ¶18, 4:20-22.)
Defendant then increased the Gross Fund pro rata, for the 5.7% that is above the 10% grace margin. This option
increased the \$350,000 Gross Fund amount by approximately **\$19,950** for a total of approximately **\$369,950**.

San Diego County, a child advocacy program that places Court Appointed Special Advocates For Children.

24. Upon the Effective Date (as defined in the Stipulation), all Released Claims of each and every member of the Classes, save and except for those who timely requested exclusion, are and shall be deemed to be conclusively released as against the Releasees. All persons and entities who are in the Classes are hereby forever barred and enjoined from commencing, prosecuting or continuing, either directly or indirectly, against the Releasees, in this or any other jurisdiction or forum, any and all Released Claims (as defined in the Stipulation).

25. Class Counsel shall file the declaration and exhibit with the Court as the current record of all consents by Participating Class Members to opt into the action and release their FLSA claim.

26. The Court sets a compliance hearing for February 17, 2023 at 8:30 am in Department C-65. The Court requires that Plaintiff file the settlement administrator's report on or before February 8, 2023.

27. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution of the Gross Fund, including interest earned thereon; (b) disposition of the Gross Fund; (c) hearing and determining applications for attorney fees and expenses in the Action; (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation and the Settlement therein; and (e) Class Members who seek to pursue Released Claims, including any dispute as to whether such claims were released as against the Releasees.

28. There is no just reason for delay in the entry of judgment approving the Class Settlement and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

DATED: 9-26-22



**HON. RONAL F. FRAZIER
JUDGE OF THE SUPERIOR COURT**