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

LUCIANO JIMENEZ, as an individual, and
on behalf of all others similarly situated,

Plaintiff,

vs.

ARCADIA CHAIR COMPANY, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 30-2020-01175920-CU-OE-CXC

*[Assigned for all purposes to Hon. Lon
Hurwitz, Dept. CX-103]*

**PLAINTIFF'S SUPPLEMENTAL BRIEF
IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 12, 2024
Time: 1:30 p.m.
Dept.: CX-103

Complaint Filed: December 23, 2020
Trial Date: None set

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 Plaintiff Luciano Jimenez (“Plaintiff”) hereby submits the following supplemental brief
3 in response to the Court’s March 22, 2024 Minute Order regarding Plaintiff’s Motion for
4 Preliminary Approval of Class Action Settlement (the “Order”). After reviewing the Court’s
5 Order, Plaintiff and Defendant Arcadia Chair Company, Inc. (“Defendant”) (Plaintiff and
6 Defendant are collectively referred to as the “Parties”) amended the Stipulation of Settlement
7 (“Settlement Agreement”) and the Notice of Pendency of Class and PAGA Action and Proposed
8 Settlement (“Class Notice”) in accordance with the issues identified by the Court.

9 Plaintiff addresses each issue raised in the Court’s Order. The amended Settlement
10 Agreement and Class Notice are attached as Exhibits 1 and 2, respectively, to the Declaration of
11 Sean M. Blakely, filed concurrently herewith. Red-line versions of the Settlement Agreement and
12 Class Notice showing all changes are attached as Exhibits 3 and 4, respectively, to the Declaration
13 of Sean M. Blakely (“Blakely Decl.”).

14 **1. High and Low Individual Settlement Payments and PAGA Payments**

15 The Court’s Order states: “*Counsel must provide information about high and low*
16 *individual class and PAGA payments.*”

17 As indicated in Plaintiff’s Motion for Preliminary Approval, the average Settlement
18 Award is estimated at approximately \$3,554.67 and the average payment from the PAGA Amount
19 is estimated at approximately \$23.81. Blakely Decl., ¶ 4. The highest Settlement Award is
20 estimated at approximately \$8,497.68. *Id.* The lowest Settlement Award is estimated at
21 approximately \$19.62. *Id.* The highest estimated payment from the PAGA Amount is estimated
22 at approximately \$72.28. *Id.* The lowest estimated payment from the PAGA Amount is estimated
23 at approximately \$0.35. *Id.*

24 Importantly, this is a non-reversionary settlement, and should any Settlement Class
25 member elect to opt-out from participation and/or should Plaintiff’s final cost reimbursement
26 request fall under the capped amount identified in the Settlement Agreement, these additional
27 funds will revert back to the Net Settlement Amount for distribution amongst all participating
28 Settlement Class members, resulting in an increase to the lowest and highest potential recoveries

1 identified herein.

2 **2. Funding of GSA and Settlement Approval Timeline**

3 The Court's Order states: "*Since the GSA is not being funded in a single payment, there*
4 *will not be sufficient funds to cover the Net Settlement Amount until the second installment is*
5 *deposited within 7 months after execution of the Settlement Agreement. The Settlement provides*
6 *that the administrator will calculate individual award amounts within 10 calendar days after*
7 *Defendant deposits the third and final installment, and within 7 calendar days of approval by*
8 *counsel, the individual award payments will be prepared and mailed. (Settlement, Sec. 4.C.) This*
9 *means that Class Members / PAGA Members may not receive any settlement monies until*
10 *approximately 15 months after the Settlement Agreement is executed. This is logistically and*
11 *practically problematic. The Settlement Agreement provides that Defendant will send the*
12 *Settlement Administrator the class data within 10 days after preliminary approval, and the*
13 *Settlement Administrator will mail the Notice Packets within 10 days after receipt of this*
14 *information. (Settlement, Secs. 9.A., 9.B.) However, since individual class payments and*
15 *individual PAGA payments may not be issued until up to 15 months after the Settlement*
16 *Agreement is executed, Class Counsel and the Settlement Administrator must attest as to how*
17 *they will address issues of fairness to the Class, the handling of the Response Deadline for*
18 *objections or opt outs or disputes, the check cashing deadline, and scheduling of the final*
19 *approval hearing.*"

20 Plaintiff submits that the timeline of events pertaining to the mailing of notices to
21 Settlement Class members, the time to submit exclusions or objections, and distribution of
22 settlement payments, is appropriate, comports with due process, and is logistically sound. As
23 indicated in Plaintiff's Motion for Preliminary Approval, following a review of Defendant's
24 financial records, Plaintiff's retained forensic accountant opined that the requested payment plan
25 schedule was necessary for Defendant to remain in business without dramatically impacting its
26 operations. As detailed below, the proposed notice process articulated in the Settlement
27 Agreement is not affected by the installment-nature funding of the Gross Settlement Amount.

28 Pursuant to the Settlement Agreement, on November 22, 2023, Defendant made the first

installment payment of \$1,450,000.00 with Phoenix Settlement Administrators. *See* Supplemental Declaration of Taylor Mitzner on Behalf of Phoenix Settlement Administrators (“Mitzner Supp. Decl.”), ¶ 3. On March 12, 2024, Defendant deposited a second installment of \$1,450,000.00 with Phoenix. *Id.*, at ¶ 4. To date, Defendant has deposited \$2,900,000.00 with Phoenix. *Id.*, at ¶ 5. Pursuant to the Settlement Agreement, Defendant is to deposit the third and final installment by January 27, 2025 (i.e., 15 months after execution of Settlement Agreement). *See* Blakely Decl., ¶ 3, Exhibit 1, at 3.C.

Assuming the Court grants preliminary approval on July 12, 2024, the settlement implementation schedule will be as follows:

- Defendant to provide Class Data to Settlement Administrator (10 business days after preliminary approval) – **July 26, 2024**
- Settlement Administrator to mail Notice Packet to Settlement Class members (10 business days after receiving Class Data) – **August 9, 2024**
- Deadline for Settlement Class members to request exclusion from, submit dispute, or object to Settlement (60 calendar days after mailing) – **October 8, 2024**
- Deadline for Plaintiff to file his Motion for Final Approval of Class Action Settlement – **November 5, 2024**
- Final Approval Hearing – **December 6, 2024**, or a date thereafter convenient for the Court
- Defendant’s deadline to deposit third and final installment – **January 27, 2025**
- Settlement Administrator calculates Settlement Award Amounts and provide to counsel (10 calendar days following Defendant’s third and final installment) – **February 6, 2025**
- Settlement Administrator mails Settlement Awards to Settlement Class members (7 calendar days after approval by counsel) – approximately **February 13, 2025**
- Deadline to cash settlement checks (180 days after mailing of settlement checks) – approximately **August 12, 2025**

Plaintiff contends that the notice process proposed in this case is consistent with proper class action procedure as it affords Settlement Class member the opportunity to object, submit exclusions and/or disputes, prior to the Final Approval Hearing. Furthermore, although Defendant

1 is making three installment payments in this case, Defendant has already timely made the first
2 two installments, and the Gross Settlement Amount will be fully deposited with the Settlement
3 Administrator by January 27, 2025, which is only fifty-two (52) calendar days following final
4 approval of the Settlement.¹ This is entirely reasonable as wage and hour class action settlements
5 are typically funded 30-60 days following final approval and the entry of judgment.

6 The Parties have revised the Class Notice to inform Settlement Class members of the
7 installment-nature funding of the Gross Settlement Amount, as well to inform Settlement Class
8 members that they can expect to receive their Settlement Awards after the Court grants final
9 approval and after Defendant makes the third and final installment on or before January 27, 2025.
10 See Blakely Decl., ¶ 3, Exhibits 2 & 4.

11 **3. Plaintiff's Release**

12 The Court's Order states: "*Plaintiff's release should explicitly exclude FEHA-related*
13 *claims.*"

14 The Parties amended the Settlement Agreement to address the Court's concerns.
15 Specifically, the Parties added the following language to paragraph 2.C. of the Settlement
16 Agreement: "Nothing contained herein shall constitute a release of any claims Plaintiff may have
17 under the California Fair Employment and Housing Act ("FEHA")." See Blakely Decl., ¶ 3,
18 Exhibits 1 & 3, at ¶ 2.C.

19 **4. Requests for Exclusion**

20 The Court's Order states: "*Court prefers 45-day deadline after remailing. Court has final*
21 *say over determination of validity of submission.*"

22 The Parties revised the Settlement Agreement to provide that Settlement Class members
23 shall have forty-five (45) calendar days from the date of re-mailing to opt-out, object, or submit
24 a dispute. See Blakely Decl., ¶ 3, Exhibits, 1 & 3, at ¶ 9.C. The Parties further revised the
25 Settlement Agreement to provide that "[T]he Court shall make the final determination regarding
26 the validity and authenticity of any Requests for Exclusion." See Blakely Decl., ¶ 3, Exhibits 1 &

27 ¹ These dates are premised on the Court granting preliminary approval on July 12, 2024, and
28 assumes a Final Approval Hearing date of December 6, 2024. Final approval may occur later
depending on the Court's availability to hear Plaintiff's Motion for Final Approval.

3, at ¶ 9.E.i.

5. Objections

The Court's Order states: "*Court prefers 45-day deadline after remailing. Court determines whether objections will be considered.*"

The Parties revised the Settlement Agreement to provide that Settlement Class members shall have forty-five (45) calendar days from the date of re-mailing to opt-out, object, or submit a dispute. *See* Blakely Decl., ¶ 3, Exhibits, 1 & 3, at ¶ 9.C. The Parties further revised the Settlement Agreement to provide that "[T]he Court shall make the final determination regarding the validity and authenticity of any Objections." *See* Blakely Decl., ¶ 3, Exhibits 1 & 3, at ¶ 9.F.

6. Disputes

The Court's Order states: "*Court prefers 45-day deadline after remailing.*"

The Parties revised the Settlement Agreement to provide that Settlement Class members shall have forty-five (45) calendar days from the date of re-mailing to opt-out, object, or submit a dispute. *See* Blakely Decl., ¶ 3, Exhibits, 1 & 3, at ¶ 9.C.

7. Fee-Splitting Agreement

The Court's Order states: "*Class counsel must disclose fee-splitting arrangement, if any, or attest there is none.*"

Plaintiff's counsel has entered into a fee sharing agreement in this case with Michael Burgis & Associates, P.C., who referred this case to Plaintiff's counsel. Blakely Decl., ¶ 5. Under the terms of the agreement, Haines Law Group, APC will receive 77.5% of any attorneys' fee award, and Michael Burgis & Associates, P.C. will receive 22.5% of any attorneys' fee award. *Id.* This fee sharing agreement was expressly agreed to in writing by Plaintiff pursuant to California Rule of Professional Conduct 1.5.1 (formerly California Rule of Professional Conduct 2-200(A)). *Id.*

8. Enhancement Payment

The Court's Order states: "*Enhancement of \$15,000 is considerably more than the \$5,000 usually approved by the Court. Counsel and Plaintiff must provide detailed declarations, including estimates of time spent by Plaintiff on various tasks and discussion of risks, to support*

1 *such a high enhancement.”*

2 Plaintiff contends the requested \$15,000.00 Enhancement Payment is warranted given
3 Plaintiff’s significant contributions to this case, the risks he assumed on behalf of Settlement
4 Class members, and the length of this litigation, which has been pending for over three years.
5 Additionally, Plaintiff’s efforts resulted in an excellent result for the Settlement Class, who will
6 receive average payments of approximately **\$3,554.67**, which is considerably higher than average
7 payments achieved in other wage and hour class action settlements.

8 As this Court is aware, this matter was heavily litigated, and only resolved after two
9 mediation sessions, extensive formal discovery, and after Plaintiff’s Motion for Class
10 Certification was fully briefed. *See* Register of Actions (“ROA”) Nos. 84, 91, 105. As detailed in
11 the Supplemental Declaration of Plaintiff Luciano Jimenez submitted herewith, Plaintiff’s efforts
12 included attending two mediation sessions, preparing for and attending a full-day deposition, and
13 regularly communicating with his counsel regarding this Action. *See* Supplemental Declaration
14 of Plaintiff Luciano Jimenez In Support of Approval of Class Action Settlement; *see also*, Blakely
15 Decl., ¶ 6.

16 **9. Settlement Administrator Website**

17 The Court’s Order states: “*Settlement does not state whether administrator will post*
18 *operative Complaint, Settlement Agreement, Notice Packet, and Order for Preliminary Approval*
19 *on its website. At Final Approval, administrator must provide invoice of administration fees and*
20 *costs.”*

21 The Parties revised the Settlement Agreement to require the Settlement Administrator to
22 maintain a website and post important documents from the case, including the operative
23 complaint, the Settlement Agreement, the Notice Packet, and the orders granting preliminary and
24 final approval, and the final judgment. *See* Blakely Decl., ¶ 3, Exhibits, 1 & 3, at ¶ 7. Plaintiff
25 will ensure that the Settlement Administrator provides an invoice of fees and costs at Final
26 Approval.

27 **ISSUES RE CLASS NOTICE**

28 1. The Court’s Order states: “*Class Notice should be revised consistent with the*

1 *issues identified above.”*

2 The Parties revised the Class Notice consistent with the issues raised in the Court’s Order.
3 *See Blakely Decl., ¶ 3, Exhibits 2 & 4.*

4 2. The Court’s Order states: “*Section entitled “Why should you read this Notice?”*
5 *should state entitlement to money for PAGA Aggrieved Employees employed directly or through*
6 *staffing agency from December 24, 2019 through November 30, 2023.”*

7 The Parties made this requested addition. *See Blakely Decl., ¶ 3, Exhibits 2 & 4.*

8 3. The Court’s Order states: “*Class Notice should state that settlement administrator*
9 *will post operative Complaint, Settlement Agreement, preliminary and final approval orders, and*
10 *Final Judgment on its website.”*

11 The Parties made this requested addition. *See Blakely Decl., ¶ 3, Exhibits 2 & 4.*

12 **ISSUES RE PROPOSED ORDER**

13 1. The Court’s Order states: “*The Proposed Order is to be revised consistent with the*
14 *issues identified above.”*

15 Plaintiff revised the Proposed Order in accordance with the Court’s Order.

16 2. The Court’s Order states: “*Settlement Agreement must be identified by the ROA*
17 *number of the declaration to which it is attached.”*

18 Plaintiff revised the Proposed Order to address this issue.

19 3. The Court’s Order states: “*Date of hearing in caption must be revised to reflect*
20 *actual hearing date.”*

21 Plaintiff revised the Proposed Order to address this issue.

22 4. The Court’s Order states: “*Proposed Order should refer to “Final Approval”*
23 *hearing instead of “Final Fairness” hearing.”*

24 Plaintiff revised the Proposed Order to address this issue.

25 5. The Court’s Order states: “*Proposed Order should also refer to the PAGA*
26 *Aggrieved Employees definition and PAGA Period.”*

27 Plaintiff revised the Proposed Order to address this issue.

28 6. The Court’s Order states: “*Proposed Order should discuss GSA, funding of*

1 *settlement fund, and proposed disbursements.”*

2 Plaintiff revised the Proposed Order to address this issue.

3 7. The Court’s Order states: “*Proposed Order should include requirement that at*
4 *final approval, settlement administrator must provide copy of its invoice with an affidavit*
5 *regarding administration of the settlement.”*

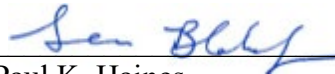
6 Plaintiff revised the Proposed Order to address this issue.

7
8 Respectfully submitted,

9 Dated: June 28, 2024

HAINES LAW GROUP, APC

10 By:


Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff