

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 01 2023

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MICHAEL ANDERSON, an individual, the
State of California, as a private attorney
general, and on behalf of all persons
similarly situated,

PLAINTIFF,

v.

R.F. WHITE CO., INC. dba WP TANK
LINES, a California Company; and DOES 1
to 100, inclusive,

DEFENDANTS

CASE NO.: CIVDS2018670

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date:

Time:

Dept:

Judge: Hon. Joseph T. Ortiz

Complaint Filed: September 11, 2020

1 Plaintiff's unopposed Motion for Preliminary Approval of a Class Action Settlement came
2 before this Court on DATE, in Department S-26, the Honorable David Cohn presiding. The Court
3 having considered the papers submitted in support of the application of the parties, HEREBY
4 ORDERS THE FOLLOWING:

5 1. The Court grants preliminary approval of the Settlement and the Settlement Class
6 based upon the terms set forth in the Settlement Agreement and Release of Class Action (the
7 "Settlement Agreement") attached as **Exhibit A** to the Declaration of Jonathan Melmed in support
8 of Plaintiff's Motion for Order Granting Preliminary Approval of Class Action Settlement. All
9 terms used herein shall have the same meaning as defined in the Settlement Agreement. The
10 settlement set forth in the Settlement Agreement appears to be fair, adequate and reasonable to the
11 Class, and the Court preliminarily approves the terms of the Settlement Agreement, including,
12 without limitation:

- 13 a. A non-reversionary Gross Settlement Amount of **\$275,000**;
- 14 b. The Class Representative incentive award to the named Plaintiff of
15 **\$10,000.00**;
- 16 c. Court approved attorneys' fees to Class Counsel of up to **\$91,657.50**,
17 representing one-third of the Gross Settlement Amount;
- 18 d. Court approved litigation costs to Class Counsel of up to **\$15,000.00**;
- 19 e. Fees and Costs of the Settlement Administrator of up to **\$10,000.00**; and
- 20 f. A PAGA allocation of \$7,000.00, with **\$5,250.00** (i.e., 75%) payable to the
21 California Labor & Workforce Development Agency for its portion of the
22 PAGA penalties.

23 2. This Court has considered the papers in support of the Motion and the Settlement
24 Agreement and finds that the, pursuant to C.R.C. Rule 3.769(d), proposed Class should be certified
25 for settlement purposes only. Specifically, the Court finds for settlement purposes only that the
26 proposed Class: (a) is ascertainable; (b) is sufficiently numerous; (c) meets the commonality
27 requirements; (d) the claims of the Class Representatives are typical of the claims of the proposed
28 Class Members; (e) Class Representatives' counsel has and is able to adequately represent the
proposed Class; (f) the Class Representative is adequate to represent the Class; and (g) class-wide

1 treatment of this dispute is superior to individual litigation because common issues predominate
2 over individual issues for settlement purposes.

3 3. The Settlement falls within the range of reasonableness and appears to be
4 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
5 and final approval by this Court.

6 4. A final fairness hearing on the question of whether the proposed Settlement,
7 attorneys' fees and costs to Class Counsel, and the Class Representative's incentive award should
8 be finally approved as fair, reasonable and adequate as to the members of the Class is scheduled
9 on the date and time set forth in the implementation schedule in Paragraph 13 below.

10 5. This Court approves, as to form and content, the Notice of Proposed Class Action
11 Settlement ("Class Notice"), in substantially the form attached to the herein as **Exhibit 1**. The
12 Court approves the procedure for Class Members to participate in, to opt out of, and to object to,
13 the Settlement as set forth in the Settlement Agreement.

14 6. The Court directs the mailing of the Class Notice by first class mail to the Class
15 Members in accordance with the Implementation Schedule set forth below. The Court finds the
16 dates selected for the mailing and distribution of the Notice, as set forth in the Implementation
17 Schedule, meet the requirements of due process and provide the best notice practicable under the
18 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

19 7. It is ordered that the Settlement Class is preliminarily certified for settlement
20 purposes only.

21 8. The Court preliminary certifies for settlement purposes only the Settlement Class
22 defined as follows: *all California residents who are or were employed by Defendants as truck*
23 *drivers or in any other similar capacity, and who worked at least one shift in California during the*
24 *Class Period*. The Class Period is defined as the period of time from September 11, 2016, through
25 June 30, 2022.

26 9. Upon final approval of the settlement, the Class Members who do not seek to be
27 excluded from the settlement release all causes of action and factual or legal theories/allegations
28 that were alleged in the operative complaint in this action and/or in the PAGA letter in support of
this action, or that could have been brought in this action based on those same factual or legal

1 theories/allegations, against the Released Parties. This Release includes the Released Claims as
2 defined in the Settlement Agreement, which includes, but is not limited to, any and all claims,
3 debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages,
4 compensatory damages, punitive damages, liquidated damages, interest, penalties, waiting time
5 penalties, injunctive relief, and actions or causes of action of whatever kind or nature, under federal
6 or state law including, but not limited to, those claims arising out of, related to, connected to, or in
7 any way involving the facts and allegations set forth in the Complaint and/or PAGA notice to the
8 LWDA, which arose during the Class Period, including claims for violation of Labor Code sections
9 510, 1197, 1198, 226.7, 512, 201, 202, 203, 2802, 2804, 226, 226.3; Business & Professions Code
10 sections 17200-17210; statutory penalties based on the foregoing and pursuant to PAGA (Lab.
11 Code, §§ 2698-2699.6); all claims for violation of the Applicable Wage Order; and all claims for
12 liquidated damages, penalties, interest, fees, and costs based on the foregoing. This Release also
13 includes, but is not limited to, the following claims for relief: (a) failure to pay proper overtime
14 wages; (b) failure to provide compliant rest periods and pay missed rest break premiums; pay in
15 lieu thereof; (c) failure to provide compliant meal periods and pay missed meal period premiums;
16 (d) failure to pay all wages due and owing at separation; (e) improper and/or inaccurate wage
17 statements and failure to provide wage statements; (f) waiting time penalties for untimely payment
18 of wages at the conclusion of employment; (g) failure to reimburse business expenses; (h) unfair
19 business practices; (i) civil penalties under the Private Attorneys General Act ("PAGA"); (j)
20 deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing; (k)
21 statutory penalties based on the foregoing; and (l) all damages, liquidated damages, penalties,
22 restitution, attorneys' fees, interest, fees, costs, and other amounts recoverable in connection with
23 the above legal authorities and/or claims for relief under local, California, and federal law. *Id.*
24 Plaintiff and/or Class Members may hereafter discover facts or legal arguments in addition to or
25 different from those they now know or currently believe to be true with respect to the claims, causes
26 of action and legal theories of recovery in this action which are the subject matter of the Released
27 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope
28 or definition of the Released Claims, and by virtue of this agreement, Plaintiff and/or Class

Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Claims against the Released Parties as defined in this agreement. No other claims are released other than those claims specifically plead in the Complaint or otherwise identified herein. This Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines. The Release Period shall be the Class Period.

10. The Court confirms Plaintiff Michael Anderson as Class Representative, and Jonathan Melmed, Megan E. Ross, and Hannah Becker of Melmed Law Group P.C. as Class Counsel.

11. The Court appoints ILYM Group, Inc. as the Settlement Administrator.

12. To facilitate administration of the Settlement pending final approval, the Court hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or administrative proceedings (including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations) regarding claims released by the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the Settlement Administrator and the time for filing claims with the Settlement Administrator has elapsed.

13. The Court orders the following **Implementation Schedule** for further proceedings:

a.	Deadline for Defendant to Submit Class Member Information to Settlement Administrator	[within 14 days after the Preliminary Approval Date]
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b.	Deadline for Settlement Administrator to Mail Notice to Class Members	[within 28 days after receiving the Class Member information from Defendant]
c.	Deadline for Class Members to Postmark Requests for Exclusion	[30 days after mailing of the Class Notice]
d.	Deadline for Class Members to submit any Objections to Settlement	[30 days after mailing of the Class Notice]
e.	Deadline for Class Members to submit information to Settlement Administrator disputing their number of workweeks	[45 days after mailing of the Class Notice]
f.	Deadline for Settlement Administrator to file Declaration of Due Diligence and Proof of Mailing	[21 Court days prior to Final Approval and Fairness Hearing]
g.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees, Costs, and Enhancement Award	[16 Court days prior to Final Approval and Fairness Hearing]
h.	Final Approval and Fairness Hearing (the Court's first available date after January 1, 2023)	<u>June 5th, 2023</u> at <u>1:30</u> a.m. <u>(p.m.)</u>

14. If any of the dates in this Implementation Schedule falls on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

15. The Court shall retain jurisdiction over the Action for all purposes pursuant to California Rule of Court 3.769 and California Rule of Civil Procedure § 664.6 to enforce the terms of the Settlement.

IT IS SO ORDERED.

FEB - 1 2023

Dated: _____

JOSEPH T. ORTIZ

Hon. Joseph T. Ortiz
Judge of the Superior Court, San Bernardino County