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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JAMES PACKES, in a Representative
capacity only, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

v.

SCHOOL OF ROCK LLC, a Delaware
Limited Liability Company; and DOES 1-10,
inclusive

Defendants

CASE NO. 30-2021-01217507-CU-OE-CXC

**SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S MOTION
FOR CERTIFICATION OF SETTLEMENT
CLASS AND PRELIMINARY APPROVAL
OF GOOD FAITH DETERMINATION OF
CLASS ACTION SETTLEMENT**

Date: January 6, 2023

Time: 10:00 a.m.

Dept.: CX105

Judge: Hon. Randall J. Sherman

I. SUPPLEMENTAL BRIEFING

This supplemental briefing is submitted in support of Plaintiff's original motion for preliminary approval, that was originally set for hearing on September 16, 2022. ("Plaintiff" or "PACKES") has made class action allegations involving violations of the California Labor Code, against SCHOOL OF ROCK LLC, and SOR Schools VI, LLC ("Defendants" or "SoR").

The parties have now jointly attempted to address all the issues in the Court's final ruling. For ease of reference, the headers are meant to track each issue pointed out in the tentative ruling in the same order.

1. The Parties Have Drafted and Executed Amended Settlement Documents

The parties have submitted an Amendment to the Original Settlement Agreement. (See **Exhibit A** to the Declaration of Eric K. Yaeckel.)

The parties have submitted a redlined Class Notice and a clean version of the final proposed Class Notice. (See **Exhibits B and C** to the Declaration of Eric K. Yaeckel.)

The parties have also submitted a redlined Request for Exclusion Form and a clean version of the final proposed Request for Exclusion Form that will be included with the Class Notice. (See **Exhibits D and E** to the Declaration of Eric K. Yaeckel.)

2. Plaintiff's Separate Individual Settlement

The Court has asked to review Plaintiff's Separate Individual Settlement that was referenced in the moving papers. (See **Exhibit F** to the Declaration of Eric K. Yaeckel.)

3. Definition of Aggrieved Employees

An definition of aggrieved employees has been added to the Amended Agreement and Class Notice. (See Ex. A at p. 2; Ex. B at § I and § 3.)

4. The Release Language Has Been Amended

The release language is now "limited to claims that are asserted in the operative pleading or that could be asserted based on the facts alleged in the operative pleading." (See Ex. A at p. 2, § 4.)

5. The Specific Release as to Certain Labor Code Claims

The Court was concerned that the release and notice referenced "claims under Labor Code §§204, 210, 226.3, 558, 1174 and 1174.5, but there appear to be no allegations in the First Amended

1 Complaint concerning these statutes, and those claims do not appear to be claims that were or could
2 have been asserted based on the factual allegations in the First Amended Complaint.”

3 The parties agreed to omit any reference to Labor Code 1174 and 1174.5 in the release and
4 notice. (See Ex. A at p. 2, § 4; Ex. B at §(IV)(E).)

5 The parties submit that the remaining Labor Code sections identified by the Court were all
6 derivative (and could have been asserted) based on the factual allegations in the First Amended
7 Complaint. Therefore it was proper to include them in the release.

8 To wit, Labor Code § 204 states “all wages” are due twice each calendar month. Labor Code
9 § 210 provides the penalty for a failure to comply with Labor Code § 204. Plaintiff’s First Amended
10 Complaint, Second Cause of Action, alleges Defendants routinely failed to provide all regular and
11 overtime compensation owed to employees. This could trigger a Labor Code § 204 violation and a
12 Labor Code § 210 penalty. (Yaeckel decl. ¶ 7; ROA # 46.)

13 Labor Code § 226.3 provides additional penalties for failure to keep records required by Labor
14 Code § 226. Plaintiff’s First Amended Complaint, Third Cause of Action, alleges wage statement
15 violations which could trigger the additional penalty set forth in Labor Code § 226.3. (Yaeckel decl.
16 ¶ 8; ROA # 46.)

17 Labor Code § 558 provides the remedies for certain violations of the Industrial Welfare
18 Commission (“IWC”) Wage Orders. Plaintiff’s First Amended Complaint, First Cause of Action,
19 specifically alleges meal and rest break violations occurred, in violation of the IWC Wage Orders.
20 Accordingly, if this claim succeeds it could trigger the penalties set forth in Labor Code § 558.
21 (Yaeckel decl. ¶ 9; ROA # 46.)

22 **6. Estimated High and Low Payments to Class Members**

23 The parties are unable to provide this estimate until the class is final, after all requests for
24 exclusion are processed. This calculation will be provided in the motion for final approval. (Yaeckel
25 decl. ¶ 10.)

26 **7. Modifications to Confirm Aggrieved Employees May Not Opt Out of a PAGA** 27 **Settlement**

28 Modifications were made to the Class Notice and Request for exclusion form to confirm that

aggrieved employees in a PAGA action may not opt out of the PAGA Settlement. (See Ex. B at §(V)(B); Ex. D.)

8. Workweek Disputes

The Class Notice and Settlement Agreement were both modified to reflect that the Court will resolve workweek disputes that cannot be resolved by the Administrator and the Parties. (See Ex. A at p. 5 ¶ 7; Ex. B at § (IV)(D).)

9. Additional Corrections to the Class Notice

The page numbering of the Class Notice has been fixed. (Ex. B). The phrase “final fairness hearing” was changed to “Final Approval Hearing.” (Ex. B at § VII.)

10. Additional Corrections to the Settlement Agreement

The additional errors referenced by the Court were all corrected within the Amended Settlement Agreement. (See Ex. A.)

11. Proofs of Service

A Proof of Service of the Original Moving Papers, the Notice of Ruling following the first hearing, and all Supplemental papers submitted herewith is being submitted concurrently. **Please Note:** some of the above was already served on the LWDA, but is being reserved again prior to this hearing in an abundance of caution. (Yaeckel decl. ¶ 11.) Both the LWDA and Defendants have been served.

Based on the above, Plaintiff renews his request for Preliminary Approval of the Class Action Settlement.

Dated: December 13, 2022

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