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

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

**NOTICE OF RULING FOLLOWING THE
MOTION FOR APPROVAL OF CLASS
SETTLEMENT**

1 TO ALL PARTIES HEREIN AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 16, 2022 at 10:00 a.m., the Motion for Approval
3 of Class Settlement filed by Plaintiff came on for hearing before the Honorable Randall J. Sherman
4 in Department CX105 of the above captioned Court.

5 The Court's Minute Order is attached hereto as Exhibit "A."

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8 Dated: October 7, 2022

SULLIVAN & YAECKEL LAW GROUP, APC

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11 _____
12 Eric K. Yaeckel
13 Attorneys for Plaintiffs JAMES PACKES, in a
14 Representative capacity only, and on behalf of other
15 members of the general public similarly situated
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 09/16/2022

TIME: 10:00:00 AM

DEPT: CX105

JUDICIAL OFFICER PRESIDING: Randall J. Sherman

CLERK: J. Phu

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: J. Boc

CASE NO: **30-2021-01217507-CU-OE-CXC** CASE INIT.DATE: 08/18/2021

CASE TITLE: **Packes vs. School of Rock, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73834710

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: James Packes

CAUSAL DOCUMENT/DATE FILED: Motion - Other for approval of good faith determination of class action settlement, 06/08/2022

APPEARANCES

No Appearance by all parties

Tentative Ruling posted on the Internet .

There are no appearances by any party.

Prior to calendar call, all parties submit on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

The ruling is to continue the hearing on plaintiff's Motion for Approval of Good Faith Determination of Class Action Settlement to January 6, 2023 at 10:00 a.m. Counsel must file supplemental papers addressing the court's concerns (not fully revised papers that would have to be re-read) at least 16 days before the next hearing date. Counsel must submit an amendment to the settlement agreement rather than any amended settlement agreement. Counsel also must provide a red-lined version of any revised papers, including the class notice. Counsel also should provide the court with an explanation of how the pending issues were resolved, with references to any corrections to the settlement agreement and the class notice, rather than with just a supplemental declaration simply asserting that the issues have been resolved.

Plaintiff did not provide the court with a copy of his separate individual settlement agreement, referenced in ¶28 of the Yaeckel Declaration. Plaintiff must provide the court with a copy for review.

The settlement agreement fails to define the group of aggrieved employees under PAGA who are included in the settlement and fails to define the PAGA period. Even though ¶45 of the settlement agreement at 13:4-5 says "the Parties stipulate that all Participating Class Members are 'aggrieved employees' for purposes of distributing the \$6,000.00", there must be clearer definitions of aggrieved employees and the PAGA period. Those definitions also must be included in the class notice.

The definition of released claims in §29 of the settlement agreement and §IV.E of the class notice is overbroad. The release must be limited to claims that are asserted in the operative pleading or that could be asserted based on the facts alleged in the operative pleading. Amaro vs. Anaheim Arena Management, LLC (2021) 69 Cal. App. 5th 521, 537 (4th Dist., Div. 3). Accordingly, the release may not include claims “based on any facts discovered in the course of the Action” but which facts are not alleged in the operative pleading. The quoted phrase is uncertain and could lead to problems and unfairness in any future litigation by a class member.

The released claims in §29 of the settlement agreement and §IV.E of the class notice include claims under Labor Code §§204, 210, 226.3, 558, 1174 and 1174.5, but there appear to be no allegations in the First Amended Complaint concerning these statutes, and those claims do not appear to be claims that were or could have been asserted based on the factual allegations in the First Amended Complaint. Thus, the parties must either justify the inclusion of those statutes in the release or delete them.

The motion fails to provide the estimated high and low payments to be paid to class members, information that would enable the court to better evaluate the reasonableness of the settlement. If such estimates are not available at this time, they must be provided in the motion for final approval.

As ¶¶61 and 72 of the settlement agreement and §IV.F of the class notice note, aggrieved employees in a PAGA action may not opt out of a PAGA settlement. Thus, the parties must modify §V.B of the class notice to reflect that fact.

The Request for Exclusion form must be referenced in §V.B of the class notice, and must be modified to reflect the fact that aggrieved employees in a PAGA action may not opt out of a PAGA settlement, and that they will still receive their share of the PAGA payment allocated to the aggrieved employees.

Section IV.D of the class notice, in discussing workweek disputes, must reflect that the court will resolve any workweek dispute not otherwise resolved by the Administrator and the parties. Paragraph 57 of the settlement agreement must be amended to provide similarly (which the somewhat redundant ¶49b of the settlement agreement already does).

Page 3 of the class notice is missing a page number.

The phrase “final fairness hearing” in §VII of the class notice must be changed to “Final Approval Hearing”, the term used in §VIII of the class notice.

There are errors in the settlement agreement that must be corrected. (1) Paragraph 20 of the settlement agreement erroneously references ¶45 as the escalator clause, when it is actually ¶47. (2) Paragraph 43a, entitled “Class Members’ General Release” is misplaced in ¶43, which is entitled “Class Representative Enhancement Payment”. The subject matter of ¶43 is covered in ¶71, entitled “Release of Claims by Class Members”. (3) The reference in ¶61 to Section III, Paragraph 11(c)(iv) of the settlement agreement should actually be to ¶59 of the settlement agreement.

There was no proof of service filed for the moving papers. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendants, to file a proof of service showing such compliance, to file a proof of service showing service of the moving papers, and to serve the LWDA and defendants with any new papers filed for future hearings.

1 *James Packes v. School of Rock LLC*
2 Superior Court of California, County of Orange
3 Case No. 30-2021-01217507-CU-OE-CXC

4 **DECLARATION OF SERVICE**

5 I, Christian Yorke Struckmeyer, declare:

6 I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not
7 a party to this action. I am employed in the office of a member of the bar of this court at whose
8 direction the service was made. My business address is 2330 Third Avenue, San Diego, California
9 92101.

10 On October 7, 2022, I served the following document(s):

11 **1. NOTICE OF RULING FOLLOWING THE MOTION FOR APPROVAL OF CLASS
12 SETTLEMENT**

13 On the parties in this action addressed as follows:

14 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

15 Katherine C. Den Bleyker

16 Katherine.DenBlyker@lewisbisbois.com

17 Timothy M. Keegan

18 Tim.Keegan@lewisbrisbois.com

19 633 West 5th Street, Suite 4000

20 Los Angeles, CA 90071

21 *Attorneys for Defendant School of Rock LLC*

22 **BY ELECTRONIC SERVICE**

23 **AND**

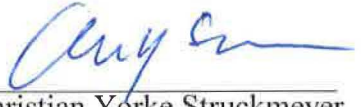
24 on **The Labor and Workforce Development Agency**

25 Via - PAGA Electronic Filing Portal

26 (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>)

27 **BY UPLOADING THE LISTED DOCUMENTS VIA THE PAGA ELECTRONIC FILING
28 PORTAL:** as required pursuant to Labor Code 2699(1)(2).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct and that this declaration was executed on October 7, 2022 at San Diego, California.

25 
26 Christian Yorke Struckmeyer