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Counsel for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RICARDO ALEXANDER OCAMPO, individually and on behalf of all others similarly situated,	)	Case No: 30-2021-01226173-CU-OE-CXC
	)	
	)	Hon. Judge Randall J. Sherman
Plaintiff,	)	Judge of the Superior Court
	)	
vs.	)	
	)	NOTICE OF ENTRY OF ORDER RE
NOR-CAL BEVERAGE CO., INC., a California	)	PLAINTIFF'S MOTION TO RECONSIDER
corporation with its principal place of business in	)	
California, and DOES 1 to 100, inclusive	)	
	)	
	)	
	)	
Defendants.	)	

TO DEFENDANT AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE The tentative ruling is to continue the hearing on plaintiff's Motion for Order Granting Preliminary Approval of Class Action Settlement to July 28, 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 reread) no later than two weeks 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. 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 or brief that simply asserts the issues have been resolved.

1 Plaintiff provides no information as to defendant's potential exposure for plaintiff's claims
2 for failure to pay all wages owed, failure to pay all overtime wages owed, failure to pay all wages
3 owed in a timely manner, waiting time penalties, failure to provide a day of rest, failure to
4 reimburse business expenses, and unfair competition. Plaintiff must provide the court with
5 information showing what potential outcome putative class members and aggrieved employees are
6 giving up in exchange for this settlement.

7
8 The moving papers do not include a copy of the two LWDA letters that counsel asserts
9 were sent to the LWDA on July 20, 2021 and November 11, 2022. The court needs a copy of these
10 letters to verify that the settlement terms are consistent with the notices provided to the LWDA.

11 Plaintiff has not provided the court with the estimated high and low payments to class
12 members or aggrieved employees under the proposed settlement. These estimates are needed to
13 assist the court in properly determining the fairness of the proposed settlement. If the figures are
14 not available now, they must be provided in the motion for final approval.

15 The allocation of only 20% of the settlement payments for wages appears to be low. The
16 estimated exposure analysis in the motion allocates over 90% of the class members' potential (non-
17 PAGA) recovery to wages. Either an increase to 33 1/3% or an explanation of why the figure is
18 not at least 33 1/3% is required.

19
20 The parties have not provided the court with a declaration from plaintiff's or defendant's
21 counsel as to any potential conflict of interest as to the proposed cy pres recipient, Legal Aid at
22 Work, as required by CCP §382.4.

23 The settlement agreement (on pp. 16-17), the class notice, and the Notice of Settlement
24 Payment (Exhibit D) all state that the Administrator will resolve any workweek disputes. The
25 documents should reflect instead that while the Administrator and the parties will attempt to
26 resolve any such dispute, the court ultimately will decide any unresolved dispute.

1 The definition of “PAGA Released Claims” in §I.HH of the settlement agreement is too
2 broad. The release must be limited to claims that are asserted in the operative pleading or that
3 could be asserted based on the facts alleged in the operative pleading. Amaro vs. Anaheim Arena
4 Management, LLC (2021) 69 Cal. App. 5th 521, 537 (4th Dist., Div. 3). Thus, the phrase “based
5 on any and all underlying Labor Code violations that were or reasonably could have been alleged
6 in the Complaints and the PAGA Notice” is overbroad and must be modified.

7 The settlement agreement in §III.K states that aggrieved employees will “fully, finally, and
8 forever be barred from seeking any claims for penalties”. However, this court will not issue an
9 injunction against the aggrieved employees. Res judicata and collateral estoppel arguments should
10 provide defendant with sufficient protection against facing these same claims again. The phrase
11 “fully, finally, and forever be barred” must be changed to “may be forever barred as a matter of
12 law”.

13 There are multiple issues in the Class Notice requiring correction:

14 • The Class Notice uses the phrases “Eligible Aggrieved Employees” and “Eligible
15 Employees” throughout, but this is a class action and representative action settlement. The notice
16 should simply use the term “Class Members” when referring to class members, “Aggrieved
17 Employees” when referring to aggrieved employees, and “Class Members and Aggrieved
18 Employees” when referring to both.

19 • The class period is erroneously stated as October 13, 2017 to the date of Preliminary
20 Approval, when it should say October 14, 2017 to the date of Preliminary Approval. (Class Notice
21 at p. 1.) Also, the date of preliminary approval should be a placeholder and filled in with an exact
22 date when preliminary approval is granted.

23 • The DO NOTHING section on page 3 of the Class Notice and Section 7 of the Class
24 Notice include a summary of the releases, but instead should detail the same releases included in
25 the Settlement Agreement, including both the Class Release and the PAGA Release.

26 • The ASK TO BE EXCLUDED (OPT OUT) section on p. 3 of the Class Notice and
27 Section 9 on p. 7 should state that class members cannot opt out of the PAGA portion of the
28 settlement and will still receive a PAGA payment if eligible.

1 • The OBJECT section on page 3 of the Class Notice should make clear that if a class
2 member asks to be excluded, he or she may not also object.

3 • The net settlement amount listed in Section 5 of the Class Notice is incorrect. It should
4 state \$172,000.00.

5 • Exhibit C includes claim form language, but this is an opt-out settlement, and so the claim
6 form language must be deleted. Exhibit D is entitled Notice of Settlement Payment, but it appears
7 to be a workweek dispute form and change of address form. The form must be titled accurately.

8 • The Class Notice in §9 should reference the opt-out form.

9 • The Class Notice in §10 improperly requires: “Any attorney who will represent an
10 individual objecting to this Settlement who has not filed a written objection must file a notice of
11 appearance with the Judge and serve Class Counsel and Defense Counsel no later than
12 _____.” This requirement is too restrictive, and the sentence must be removed.

13 • There is no explanation of the calculation for the individual class settlement payment in
14 Section 5 of the Class Notice.

15 Counsel should propose a realistic Final Approval Hearing date, bearing in mind that all
16 papers in support of the Final Approval Hearing, including detailed hourly breakdowns of
17 plaintiff’s attorneys to support a lodestar cross-check, detailed plaintiff attorney cost breakdowns,
18 an Administrator declaration and invoice, and plaintiff’s declaration to support the enhancement
19 request, must be filed at least 16 calendar days before the Final Approval Hearing date, to provide
20 enough time for court review, and must be served in compliance with CCP notice of motion
21 requirements.

22 Plaintiff has not shown that he served the LWDA with his moving papers. Plaintiff is
23 ordered to give notice of the ruling to the LWDA, and to defendant unless it waives notice, to serve
24 the LWDA with his original moving papers as well as any new papers filed for future hearings,
25 and to file a proof of service showing such compliance.

1 Dated: July 13,2023

POTTER HANDY, LLP

2 By: /s/James M. Treglio
3 James M. Treglio
4 Counsel for Plaintiff
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PROOF OF SERVICE
OCAMPO v. NOR-CAL BEVERAGE CO., INC.
Case NO.:30-2021-01226173-CU-OE-CXC

I, the undersigned, am over the age of eighteen years and am a resident of San Diego County, California; I am not a party to the above-entitled action; my business address is 100 Pine St., Ste 1250, San Francisco, CA 94111.

On July 13, 2023, I served the following document(s):

NOTICE OF ENTRY OF ORDER RE PLAINTIFF'S MOTION TO RECONSIDER

Addressed to:

Ellen M. Bronchetti ebronchetti@mwe.com
Saniya Ahmed sahmed@mwe.com
MCDERMOTT WILL & EMERY LLP
Attorneys for Nor-Cal Beverage Co. Inc.

- ☐ BY USPS MAIL: I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at San Diego, California.
- ☐ BY FACSIMILE: In addition to the service by mail as set forth above, I forwarded a copy of said documents via facsimile to the listed facsimile number.
- ☐ BY OVERNITE EXPRESS: I caused such envelope with postage thereon fully prepaid to be placed in the Designated Overnight Express drop box at San Diego, California.
- ☐ BY PERSONAL SERVICE: I caused said documents to be personally served on all listed recipients via Ace Attorney Services.
- ☒ BY ELECTRONIC MAIL TRANSMISSION: I caused the listed documents to be electronically filed and subsequently emailed to the recipient(s).

Executed on July 13, 2023 from San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ James M. Treglio

James M. Treglio