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Attorneys for Plaintiff LANCE HILD, in a Representative capacity only, and on behalf of other members of the public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LANCE HILD, in a Representative capacity
only, and on behalf of other members of the
public similarly situated

Plaintiff,

v.

WESTSIDE BUILDING MATERIAL
CORPORATION, a California Corporation,
and DOES 1-10, inclusive

Defendant

CASE NO. 37-2021-00041781-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
SUPPLEMENTAL BRIEFING RE:
UNOPPOSED MOTION RE: PAGA
SETTLEMENT APPROVAL**

Date: September 2, 2022

Time: 10:30 a.m.

Dept.: C-70

Judge: Hon. Carolyn Caietti

1 I, Eric K. Yaeckel, declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of
4 record for Plaintiff LANCE HILD, in a Representative capacity only, and on behalf of other
5 members of the public similarly situated in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed Motion Re: PAGA Settlement
7 Approval. I am personally familiar with the facts set forth in this declaration and, if called to
8 testify, could and would do so.

9 **Investigation and Discovery**

- 10 3. On November 8, 2021, Plaintiff HILD (through our office) propounded his first set of written
11 discovery requests (five separate devices) on Defendant WESTSIDE BUILDING MATERIAL
12 CORPORATION ("WESTSIDE"). Plaintiff HILD sought (among other information and
13 documents) the identities of putative class member, WESTSIDE Compensation policies,
14 employee handbooks, wage statements, payroll records, time records and reimbursement
15 policies.
- 16 4. On December 23, 2021, WESTSIDE served verified responses and some objections.
17 WESTSIDE produced *inter alia*, HILD's time and wage records, a copy of the operative
18 employment handbook, copies of all other relevant employment policies, and information
19 relevant to the size of the representative group.
- 20 5. The parties met and conferred extensively regarding the requests for discovery as to other
21 employees. During this time the parties discussed the claims as a whole. Eventually, the parties
22 agreed to an early mediation and an informal production of additional discovery that Plaintiff
23 needed to evaluate before participating in mediation.
- 24 6. WESTSIDE agreed to turn over a large sampling of the time and wage records for other
25 putative aggrieved employees during the operative limitations period. In total there were over
26 1,110 pages of documents and data produced. This was analyzed internally for compliance by
27 our office, to access *inter alia*, projected rates of violations for the representative group.
- 28 7. As part of our investigation, my office also spoke with several other employees during the

1 course of the litigation.

2 8. On May 9, 2022, the parties attended a mediation before an experienced and well-respected
3 wage and hour class action mediator, Mike Roberts, Esq.

4 9. Prior to the mediation, counsel for both parties agreed to the informal exchange of additional
5 information pertinent to a class-wide settlement. In addition to the documents referenced
6 above, such information included verification of policies and procedures of WESTSIDE, as
7 well as the size (employee numbers and workweek information) of the potential PAGA
8 representative group.

9 10. Both parties submitted detailed written submissions to the Mediator. Plaintiff's brief (shared
10 with WESTSIDE) contained a detailed explanation of the claims at issue, and the results of
11 Plaintiff's counsel's analysis of the employee time and wage records.

12 11. The parties were able to reach an agreement on the key terms of settlement at the mediation.
13 Negotiations over the final terms continued for several weeks.

14 12. As of May 27 of 2022, the parties finalized and executed the Settlement Agreement of PAGA
15 Claim (the "Agreement") previously presented to this Court.

16 13. Following the Court's instructions in the Court's August 5 minute order, the parties executed
17 an amended "Agreement" as of August 26, 2022 to clarify the scope of the release. A true and
18 correct copy of the amended Agreement is attached as **Exhibit A**. The only change was to the
19 release provision starting at section 7: "Please Note..." No other changes were made.

20 **Analysis of the Claims and Assessment of the Risk of Further Litigation**

21 14. Our office previously detailed the experience of counsel in the moving papers. (See ROA #
22 34). Based on our experience, we maintain each of the primary claims at issue had risks to
23 maintaining representative status through trial (based on a manageability challenge) and then
24 establishing liability.

25 15. Plaintiff's primary claim was that Defendant failed to allow for meal and rest periods and
26 failed to pay meal and rest period penalties.

27 16. The other claims were largely derivative in nature (e.g. employees were not paid for work
28 performed during meal periods). Plaintiff also alleged that Defendant also failed pay for all

time worked, and failed to accurately state on Class Member's wage statements all hours worked.

17. In addition, Plaintiff contends that he incurred cell phone expenses without reimbursement and that Defendant failed to pay all wages due upon termination.

18. As to the Meal and Rest period claims, Defendant maintained that it had compliant written policies and otherwise complied with its duties to provide compliant breaks. Defendant also contended individualized inquiries will abound as to why individual employees may have failed to take appropriate meal or rest periods, making a trial on these issues unmanageable.

19. As to the unpaid wage claims, Defendants argued that it relieved employees of all duty during breaks so employees were not "under employer control" during said breaks.

20. As to the reimbursement claims, Plaintiff contended that California law requires reimbursement to these employees whenever a cell phone is used for work purposes. *See e.g., Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Defendant argued that *Cochran* is distinguishable because the policy in this case does not require employees to use their cellular phones. Defendant also argued that individualized inquiries regarding the use of cellular phones and necessity of other expenses would make trial unmanageable.

21. Defendant argued all other claims were derivative and that the Trial Court could decline to stack additional penalties, based on existing caselaw.

PAGA Penalties and Anticipated Mitigation

22. Based on Plaintiff's counsel's evaluation of the claims and examination of the records, Plaintiff estimates that the most realistic "best case" scenario would be a judgment in the range of \$200,000.00 to \$300,000.00. A worst case scenario would be a recovery of \$0, by way of a defense verdict.

"PAGA" Violations: 5 (separate Labor Code violations (203, 226, 226.7, 1194, 2802)) x **4,160** (pay periods at issue) x **\$100.00** (per violation per the statute) x .25 (approximate violation rate) = **\$520,000**.

23. Given our experience, this maximum damage number is not realistic. It is extremely likely the Court could have found some penalties duplication and also mitigated the per violation

1 amount. We submit a best case scenario (based on existing case law) would be that any award
2 seeking the maximum penalties would be reduced by something in the range of approximately
3 40 to 60 percent. That would result in a judgment close to the range of \$200,000.00 to
4 \$300,000.00.

5 24. Plaintiff's counsel agrees with the rational that penalties can, and should, be mitigated in
6 situations like this where an employer "steps up" early in litigation to address and perceived
7 violations. Moreover, based on Plaintiff's counsel's analysis, it appears that the employer may
8 not have even been aware of many of the alleged violations. This further supported mitigation.

9 25. Accordingly, our office submits the recovery secured via this settlement, is a reasonable
10 compromise and is in the best interests of the PAGA members and the State of California (who
11 has not objected to the result).

12 **The Attorney Work Performed**

13 26. The amount of hours billed was previously detailed to the Court. (See ROA #35) However,
14 counsel will attempt to provide further specificity here as to the tasks performed. As to Mr.
15 Sullivan's 21.5 billed hours, the work on this case consisted of the majority of pre-filing
16 investigations, and all client interactions. This included reviewing Mr. Hild's personnel file
17 documents to identify potential violations. This also included a detailed investigation into the
18 background of Plaintiff Hild and the merits of his alleged claims. Finally, additional analysis
19 and research was performed as to estimated exposure and Defendants viability to pay a large
20 judgment. Mr. Sullivan also spoke with several other employees within the PAGA group.

21 27. The 41.3 hours billed by the associates included the preparation of the pre-litigation "PAGA
22 Notice" letters, the preparation of the operative pleading, and the preparation of all discovery
23 requests. Mr. Kuhn's billing also evidences the review of all documents received from
24 Defendant (several hundred pages), and the preparation of the operative Mediation Brief.
25 Finally, Mr. Kuhn billed for his preparation and attendance at the Mediation. Moreover, the
26 associates were the primary point of contact with Defense counsel on all email and telephone
27 calls. They also had multiple meetings (in person and telephonic) with Mr. Hild, to gather
28 information to assist in the prosecution of this matter. Finally, the associates spent substantial

time preparing settlement documents, and appearing at the prior hearings seeking settlement approval.

28. I personally, have spent approximately 8.5 hours preparing the instant supplemental briefing. However, am “writing off” this time for purposes of the lodestar analysis.

The Reasonableness of Plaintiff’s Hourly Rates

29. I printed a copy of the Updated Laffey Matrix from the following website: www.laffeymatrix.com. A true and correct copy is attached as **Exhibit B**.

30. The referenced "Laffey" chart states that for the time periods in this case, an attorney with 20 + years of experience is entitled to a fee of between \$899 and \$914 per hour. Mr. Sullivan has over 26 years working on class action litigation and only bills at the rate of \$660 per hour.

31. For an attorney with 1-3 years experience, the matrix states a reasonable fee is between \$372 - \$378 per hour. The associates working on this matter all had at least 1-3 years experience and only bill at the rate of \$360 per hour.

32. Recently, counsel was praised by this Superior Court (Hon. Timothy Taylor) for being eminently reasonable in its fee request (in addition to ultimately upholding the hourly rates as reasonable). A true and correct copy of Judge Taylor’s minute order (with the relevant quoted language on the last page) is attached as **Exhibit C**.

33. Several other Judges of the San Diego Superior Court (Hon. Katherine Bacal, Hon. John Meyer Hon. Richard Whitney, and Hon. Eddie Sturgeon) have all recently granted Plaintiff’s fee applications in class action settlements in full, at the same hourly rates being sought here. The final approval orders which granted the fee requests in full, are all attached as **Exhibit D**.

34. It should be noted that this case was taken by our firm on a contingency basis. A contingent fee of 35% of the recovery from attorneys fees was freely negotiated and entered into with the client, even though that is less than is being sought here.

Costs of Litigation

35. Counsel’s total costs expended in this matter will be approximately \$5,024.26, including filing and mediation fees, copying and document preparation charges, investigative costs, and research fees. However, Plaintiff limits the reimbursement amount sought to that agreed to in

1 the settlement which is \$5,000. These costs are broken down as follows:

- 2 a. Filing fees (including the Complaint and all Motions, E-file Charges, and
3 attorney messenger fees (for service of process) fees) totaled \$731.68.
- 4 b. Mediation fees totaled \$3,625.00.
- 5 c. I approximate my office has expended \$118.93 in copies and postage fees in
6 this matter.
- 7 e. My office has expended approximately \$48.65.00 in travel fees which include
8 travel to and from a client meeting and travel to and from the Court including
9 parking fees in connection with this case.
- 10 f. My office expended approximately \$500 in legal research fees in connection
11 with this case.

12 **Administration**

- 13 36. CAC Services Group, LLC. (“CAC”) was agreed to by the parties to be the “Settlement
14 Administrator” for purposes of providing the Notice and issuing all payments pursuant to the
15 Agreement. CAC has extensive experience in administering class and representative action
16 settlements. See <https://www.cacservicesgroup.com/index.cfm>
- 17 37. CAC agreed to administer this settlement for the specific amount of \$2,786.40. (Please see
18 **Exhibit E**. In an abundance of caution, given counsel’s experience that there are sometimes
19 unexpected costs, the parties requested (and CAC agreed to) a “not to exceed” maximum
20 administration cost of \$3,000. If administration is completed for less than \$3,000, the
21 difference will go back into the PAGA settlement fund for distribution between the LWDA and
22 aggrieved employees.

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38. The parties have agreed on a Proposed Notice to be Mailed out to the PAGA employees. A true and correct copy is attached as **Exhibit F**.

Eric Yarbud

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EXHIBIT A

SETTLEMENT AGREEMENT OF PAGA CLAIM

1. **PARTIES:** The parties to this Settlement Agreement of PAGA Claim (“Agreement”) are Plaintiff Lance Hild (“Plaintiff”) on behalf of himself and all “aggrieved employees” pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698 *et seq.*, on the one hand, and Defendant Westside Building Material Corporation (the “Company”), on the other hand. Plaintiff and the Company are collectively referred to as the “Parties.” The “PAGA Class” consists of all individuals who were employed by the Company in the State of California as non-exempt employees between July 8, 2020 and the date of the Court order granting approval of this Settlement (the “PAGA Period”).

2. **PROCEDURAL HISTORY:** On July 20, 2021, Plaintiff submitted a letter (the “PAGA Letter”) to the Labor and Workforce Development Agency (“LWDA”) regarding his intention to pursue PAGA penalties against the Company. On September 30, 2021, Plaintiff filed a complaint in San Diego Superior Court alleging a cause of action for recovery of civil penalties under PAGA (the “Complaint”). The Parties have agreed to settle all claims outside of litigation.

3. **INVESTIGATION:** The Parties have conducted investigation of the facts and law relating to this dispute. Such investigation has included, *inter alia*, the production and analysis of Plaintiff’s timekeeping and pay records and the exchange of formal written discovery requests and responses regarding, among other things, the Company’s wage and hour, timekeeping, and pay practices. Plaintiff alleged that the Company: (1) failed to provide the PAGA Class compliant meal and rest periods; (2) failed to pay the PAGA Class at least minimum wage for all hours worked; (3) failed to properly calculate and pay overtime compensation; (4) failed to furnish accurate wage statements; (5) failed to reimburse necessary business expenses; and (6) failed to properly and timely pay final wages upon termination.

The Company denies each of these claims. Based upon a thorough review of the law and facts of this case, the Company contends that there is no basis for penalties to be assessed against it because all amounts properly owed to the PAGA Class were timely paid, the Company complied with its obligations under applicable law to provide meal and rest periods, the Company reimbursed the PAGA Class for any necessary business expenses, the Company provided

AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

Page 2 of 7

compliant wage statements, and the Company timely paid all final wages. Moreover, the Company took effective steps to address any perceived or alleged wage and hour violations. Nevertheless, given the risks inherent in litigation and in the spirit of compromise, the Parties agree that a compromise of all claims is in their best interests.

4. BENEFITS OF SETTLEMENT TO PAGA CLASS MEMBERS: Plaintiff recognizes the expense and length of continued proceedings necessary to continue the litigation against the Company through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of further litigation, the difficulties and delays inherent in such litigation, the relatively small size of the PAGA Class, the Company's efforts to improve its wage and hour policies and procedures following notification of Plaintiff's claims, and the Company's defenses to Plaintiff's claims for recovery of civil penalties under PAGA. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in this dispute, the Company's defenses thereto, and the difficulties in establishing damages for Plaintiff. The Parties have engaged in arms-length settlement discussions regarding all claims and Plaintiff has determined that the settlement set forth in the Agreement is fair, adequate and reasonable, and is in the best interests of the PAGA Class.

5. DEFENDANTS' DENIAL OF WRONGDOING: The Company denies each of the claims asserted by Plaintiff. The Company continues to assert defenses thereto and expressly deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged by Plaintiff. Neither this Agreement nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against the Company of any fault, wrongdoing, or liability whatsoever.

6. EFFECTIVE DATE: This Agreement shall become effective on the date in which this Settlement is finally approved as provided herein and the Court's Final Judgment ("Final Judgement") becomes final ("Effective Date"). The "Effective Date" of the release of the Released Claims and for purposes of funding the settlement, is once the Court has (1) approved the settlement terms and (2) issues a Judgment in the action. The parties agree that there is no right to

AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

Page 3 of 7

opt-out or object to a PAGA Settlement. It is therefore the parties' intention that the Settlement shall be final at the time of Court Approval and Entry of Judgment. Funding shall be due based on this date and there shall be no further waiting periods given that there is no right to appeal.

7. **SETTLEMENT AND RELEASE:** In exchange for Plaintiff and the PAGA Class's release of claims, the Company agrees to pay the sum of \$80,000 (the "PAGA Settlement Amount"). As of the Effective Date, and subject to the Company's payment of the PAGA Settlement Amount, the PAGA Class Members, including Plaintiff, release the Company, all of its affiliate entities (including all Peckham family-related businesses, PGS Westside I, Inc. and PGS Westside II, Inc.), and each of their past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, any individual entity that could be alleged to be jointly liable with the Company, joint employers, joint obligors, clients, parents, and attorneys and each of their respective company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents (the "Released Parties"), from the "Released Claims."

For purposes of this Settlement, the "Released Claims" are defined as: all claims for the recovery of civil penalties which arose during the PAGA Period and which are referenced or otherwise contemplated in the PAGA Letter and the Complaint. The Released Claims specifically include the following: (1) that the Company did not pay Plaintiff and the PAGA Class all wages, including minimum wages and overtime wages in violation of California Labor Code sections 510, 1194, and 1197; (2) that the Company did not allow Plaintiff and the PAGA Class to take meal periods as required by law or pay Plaintiff and the PAGA Class as required by law when such meal periods were not provided in violation of California Labor Code sections 226.7 and 512; (3) that the Company did not allow Plaintiff and the PAGA Class to take rest periods as required by law or pay Plaintiff and the PAGA Class as required by law when such rest periods were not provided in violation of California Labor Code sections 226.7 and 1198; (4) that the Company failed to

AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

Page 4 of 7

provide accurate and compliant wage statements to Plaintiff and the PAGA Class in violation of California Labor Code sections 226; (5) that the Company failed to timely pay final wages at discharge in violation of California Labor Code sections 201, 202, and 203, and then failed to pay waiting time penalties pursuant to section 203 of the California Labor Code; (6) that the Company violated the California Labor Code section 2802 in failing to indemnify Plaintiff and the PAGA Class for business expenses; (7) that the Company owe penalties pursuant to the PAGA, premised on the alleged violations articulated above; and (8) that the Company owe penalties, interest attorneys' fees, or other damages arising out of the Company's alleged failure to pay wages and penalties released herein. Plaintiff and the PAGA Class specifically release any and all claims to recover PAGA penalties against the Company under Labor Code section 2698 *et seq.*

PLEASE NOTE: It is the intent of the Parties that the above-described release applies only to the PAGA "representative" claims that were alleged in the Complaint. Nonparty current and/or former employees of the Company will retain their rights to bring claims against the Company in their "individual" capacities unless the nonparty current and/or former employees of the Company have released their rights to bring claims against the Company pursuant to an agreement, if any.

8. ALLOCATION OF SETTLEMENT AMOUNT: Plaintiff shall seek an enhancement payment as the PAGA representative not to exceed \$5,000.00 to be deducted from the Settlement Amount ("Enhancement Payment"). Plaintiff's counsel intends to move the Court for an award of attorneys' fees in the amount of \$26,666.67 and costs in the amount of \$5,000 to be deducted from the Settlement Amount, to compensate Plaintiff's counsel for their representation of the PAGA Class in this matter (the "Fee Award"). The portion of the Settlement Amount remaining after the deduction of the Enhancement Payment and the Fee Award shall be referred to as the "Net Settlement Amount." The Parties agree that seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA (the "LWDA Payment") and twenty-five percent (25%) of the Net Settlement Amount shall be paid to the PAGA Class Members, including Plaintiff (the "PAGA Payment"). The PAGA Payment shall be allocated pro rata based on the number of workweeks of the entire PAGA Period worked by each eligible PAGA Class Member relative to

AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

Page 5 of 7

the total workweeks in the PAGA Period. For purposes of this Settlement only, the Parties agree that PAGA Class Members employed by the Company during the PAGA Period are “aggrieved employees” under PAGA. If the Court does not approve any portion of the Fee Award as requested and described above, then the difference not awarded shall be added to the Net Settlement Amount and distributed among the participating PAGA Class Members.

9. TIMING OF PAYMENT OF SETTLEMENT AMOUNT: Within 21 days of the Effective Date, the Company (through an independent administrator agreed upon by the Parties and paid for using a portion of the PAGA Settlement Amount) shall mail to each PAGA Class member his or her share of the PAGA Payment and submit to the LWDA the LWDA Payment.

10. LWDA NOTICE: The LWDA will be given notice of this Agreement pursuant to California Labor Code § 2699(1)(2). Plaintiff will serve a copy of this Settlement Agreement to the LWDA on the same day the Agreement is filed with the Court. Plaintiff will also submit a copy of the Court’s Final Judgment to the LWDA within ten (10) days after entry of the Final Judgment, pursuant to California Labor Code § 2699(1)(3).

11. AMENDMENT OR MODIFICATION: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

11. ENTIRE AGREEMENT: This Agreement and any attached exhibits constitute the entire agreement among these Parties relating to the resolution of Plaintiff’s claims for the recovery of civil penalties pursuant to PAGA, and no oral or written representations, warranties, or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

12. BINDING ON SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13. COUNTERPARTS: This Agreement may be executed in one or more counterparts, including by DocuSign, e-mail, and facsimile. All executed counterparts and each of

AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

Page 6 of 7

them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

14. **THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE:** The Parties believe this Agreement is a fair, adequate, and reasonable settlement of this PAGA Action and have arrived at this Agreement in arms-length negotiations, taking into account all relevant factors, present and potential.

15. **JURISDICTION OF THE COURT:** The Court shall retain jurisdiction with respect to interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith pursuant to Civil Code section 664.6

16. **COOPERATION AND DRAFTING:** Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the parties.

17. **INVALIDITY OF ANY PROVISION:** Before declaring any provision of this Agreement invalid, the Court shall first try to construe the provision as valid to the extent possible under the law so as to render all provisions of this Agreement valid and enforceable.

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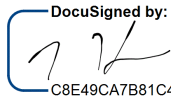
AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

Page 7 of 7

18. **PAGES:** This Settlement consists of seven (7) pages and is made and entered into on the dates indicated below.

8/26/2022

Dated: _____, 2022

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Lance Hild

WESTSIDE BUILDING MATERIAL
CORPORATION

Dated: _____, 2022

By: _____

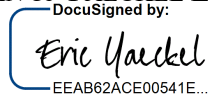
William Peckham, President

APPROVED AS TO FORM:

8/26/2022

Dated: _____, 2022

SULLIVAN & YAECKEL LAW GROUP, APC

DocuSigned by:

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By: _____

Eric K. Yaeckel, Esq.
Ryan T. Kuhn, Esq.
Attorneys for Lance Hild

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: _____, 2022

By: _____

Jennifer N. Lutz, Esq.
Christine Y. Dixon, Esq.
Attorneys for Westside Building Material
Corporation

AGREEMENT OF SETTLEMENT AND GENERAL RELEASE

Page 7 of 7

18. **PAGES:** This Settlement consists of seven (7) pages and is made and entered into on the dates indicated below.

Dated: _____, 2022

Lance Hild

WESTSIDE BUILDING MATERIAL
CORPORATION

Dated: 8/26, 2022

By:



William Peckham, President

APPROVED AS TO FORM:

SULLIVAN & YAECKEL LAW GROUP, APC

Dated: _____, 2022

By:

Eric K. Yaeckel, Esq.
Ryan T. Kuhn, Esq.
Attorneys for Lance Hild

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: August 26,, 2022

By:



Jennifer N. Lutz, Esq.
Christine Y. Dixon, Esq.
Attorneys for Westside Building Material
Corporation

EXHIBIT B

LAFFEY MATRIX

History

Case Law

Expert Opinions

See the Matrix

Contact us

Home

Links

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT C

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 02/07/2020

TIME: 01:30:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Anthony Shirley

REPORTER/ERM: Johnell Gallivan CSR# 10505

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2017-00041583-CU-OE-CTL** CASE INIT.DATE: 11/02/2017

CASE TITLE: **Virgie M Toralba vs. Rite Aid Corporation [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Virgie M Toralba

CAUSAL DOCUMENT/DATE FILED: Notice - Other of unopposed motion for conditional certification of settlement class, 01/15/2020

APPEARANCES

Eric K Yaeckel, counsel, present for Plaintiff(s).

Kymberleigh Damron-Hsiao, counsel, present for Defendant(s).

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

Tentative Ruling on Renewed Motion for Preliminary Approval of Class Action Settlement

Toralba v. Rite Aid Corporation, Case No. 2017-41583

February 7, 2020, 1:30 p.m., Dept. 72

1. Background and Procedural Posture.

This case started out as a PAGA representative action challenging the wage and hour practices of the defendants Thrifty/Payless and its parent/holding company, Rite Aid Corporation. The six count complaint was filed November 2, 2017. ROA 1. The case was assigned to Judge Trapp, but plaintiff challenged her, and the case was reassigned to Dept. 72. ROA 8-10. Defendant answered in December of 2017. ROA 12. Plaintiff sought and received leave to file the operative first amended complaint (FAC) in February of 2018, adding defendants. ROA 17-23. Defendants answered the FAC separately but through the same counsel in April of 2018. ROA 34-35. In June of 2018, the court resolved a discovery dispute. ROA 39-45.

At the due-course CMC, the court set the case for trial in June of 2019. ROA 30-33. Plaintiff then sought to forestall the need for a trial on some of the claims with a motion for summary adjudication directed at counts* one and three in the FAC. These involve the overtime, rest period, and meal period

claims. ROA 47-54. Defendants filed opposition. ROA 57-67. Plaintiff filed reply. ROA 68-74. The court reviewed the papers, and on January 4, 2019, denied the motion in a detailed ruling. ROA 78.

Evidently there are numerous other challenges to the wage and hour challenges of Rite Aid/Thrifty/Payless in other California counties. ROA 87. Counsel have indicated the defendant faces severe financial problems as the result of several competitive challenges.

Defendants then scheduled motions for summary adjudication of counts* 1, 2, 3, 4 and 6 (Thrifty/Payless) and counts 1-6 (Rite Aid). ROA 88-98. These motions were filed in February of 2019 and initially set for hearing April 19. The parties stipulated to defendants amending their answers (ROA 100), and then approached the court to continue the trial date and the hearing on the motions for summary adjudication to facilitate mediation. ROA 103-106. These requests were granted, with the result that the trial was then set for July and the motions for May 24, 2019. ROA 116-123. However, the parties thereafter reached a tentative settlement, ROA 128-130, and advised the court that part of the settlement involved in addition of class claims. The court then set a preliminary approval hearing for August 16, 2019. ROA 140. That hearing went forward, and the motion was granted. ROA 159-163.

In the days, weeks and months following the preliminary approval, problems arose. The first was minor, and easily remedied. ROA 164. The second was more profound. In the moving papers seeking preliminary approval, the parties had represented to the court that there were approximately 17,775 total class members. However, once defendants verified the actual employment data to send it to the settlement administrator, they determined the true class size is closer to 29,788. ROA 166-168. When this came to light, the court vacated the preliminary approval and took the fairness hearing off calendar. ROA 173, 176.

About a month later, the parties returned to court with a revised settlement agreement. ROA 178-181. The court placed the matter back on calendar. ROA 182-184.

Plaintiff has now filed a renewed motion for preliminary approval of the revised settlement. ROA 186-194. By design, there is no opposition. The court has reviewed the papers.

2. Applicable Standards.

A. "Under Code of Civil Procedure section 382, a class action is permitted 'when the question is one of a common or general interest, or many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. . . .' Class certification requires both an ascertainable class and a well-defined community of interest among class members." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 575.) "The 'community of interest' requirement embodies three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Ibid.*)

"Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification. . . . [I]n the absence of other error, a trial court ruling supported by substantial evidence generally will not be disturbed 'unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation].' [Citation.] Under this standard, an order based upon improper criteria or incorrect assumptions calls for reversal 'even though there may be substantial evidence to support the court's order.'" [Citations.] *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435-436 (*Linder*).

"The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; *Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 80 ["Under the abuse of discretion standard, 'a reviewing court should not disturb the exercise of a trial court's discretion unless it appears there has been a miscarriage of justice.' "].

No better statement of the principles guiding class certification can be found than the one made by a unanimous Supreme Court in May of 2014 in *Duran v. U.S. Bank*:

a. *Predominance of Common Issues*

"A class action may be maintained if there is an ascertainable class and a well-defined community of interest among the class members. (*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 913 (*Washington Mutual*); see Code Civ. Proc., § 382.) As part of the community of interest requirement, the party seeking certification must show that issues of law or fact common to the class predominate. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)

"We have observed that the ultimate question for predominance is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238; see *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104-1105, 1108.) ¶ The answer hinges on whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (*Sav-On*, [*supra*, 34 Cal.4th] at p. 327.).

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." [Citations.] (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021-1022 (*Brinker*); see also *Employment Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809, 815.) However, we have cautioned that class treatment is not appropriate if every member of the alleged class would be required to litigate numerous and substantial questions determining his individual right to recover following the class judgment on common issues. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 459.)

"The granting of class certification thus requires a determination that group, rather than individual, issues predominate. Such a finding, however, does not preclude the consideration of individual issues at trial when those issues legitimately touch upon relevant aspects of the case being litigated.

b. *Manageability of Individual Issues*

"Although predominance of common issues is often a major factor in a certification analysis, it is not the only consideration. In certifying a class action, the court must also conclude that litigation of individual issues, including those arising from affirmative defenses, can be managed fairly and efficiently. (*Washington Mutual*, *supra*, 24 Cal.4th at pp. 922-923.) [W]hether in a given case affirmative defenses should lead a court to approve or reject certification will hinge on the manageability of any individual issues. [Citation.] (*Brinker*, *supra*, 53 Cal.4th at p. 1054 (conc. opn. of Werdegar, J.)) In wage and hour cases where a party seeks class certification based on allegations that the employer consistently

imposed a uniform policy or de facto practice on class members, the party must still demonstrate that the illegal effects of this conduct can be proven efficiently and manageably within a class setting. (*Brinker*, at p. 1033; *Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 989.)

"After a class has been certified, the court's obligation to manage individual issues does not disappear. [O]nce the issues common to the class have been tried, and assuming some individual issues remain, each plaintiff must still by some means prove up his or her claim, allowing the defendant an opportunity to contest each individual claim on any ground not resolved in the trial of common issues. (*Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, 1210.) In *Sav-On*, *supra*, 34 Cal. 4th at page 332, we upheld the certification of an overtime class action even though the defendant complained that calculation of each class member's recovery would likely 'degenerate into a multitude of mini-trials[.]' There, we found substantial evidence of common issues based on class members' allegations that they were all required to work overtime and perform nonexempt tasks pursuant to uniform company policies and practices. (*Id.* at pp. 327-328.) We upheld the trial court's certification order even as we acknowledged that individualized proof of class members' nonexempt status and overtime amounts might ultimately be required. (*Id.* at pp. 332-334.) In so doing, we stressed that 'individual issues do not render class certification inappropriate so long as such issues may effectively be managed.' (*Id.* at p. 334, italics added.)

"Trial courts must pay careful attention to manageability when deciding whether to certify a class action. In considering whether a class action is a superior device for resolving a controversy, the manageability of individual issues is just as important as the existence of common questions uniting the proposed class. If the court makes a reasoned, informed decision about manageability at the certification stage, the litigants can plan accordingly and the court will have less need to intervene later to control the proceedings.

"Trial courts also have the obligation to decertify a class action if individual issues prove unmanageable. (*Sav-On*, *supra*, 34 Cal.4th at p. 335; *Washington Mutual*, *supra*, 24 Cal.4th at p. 927.) In the context of overtime class actions, some courts have decertified when individual issues related to an exemption defense threaten to overwhelm the litigation. For example, in *Walsh v. IKON Office Solutions, Inc.*, *supra*, 148 Cal.App.4th at pages 1445-1448, the court certified an overtime class action involving the outside salesperson exemption. It later decertified the class when discovery revealed that the circumstances of each class member's employment differed significantly. The Court of Appeal affirmed this ruling, noting that differences in time spent on sales activities and work outside the office meant that adjudication of the exemption would require individual hearings on liability and damages. (*Id.* at p. 1456.) Similarly, *Keller v. Tuesday Morning, Inc.* (2009) 179 Cal.App.4th 1389 upheld the decertification of an overtime class action brought by retail store managers. Although the trial court initially certified a class based on our opinion in *Sav-On*, two years later it determined that individual inquiries concerning how managers spent their time would overwhelm the issues susceptible to classwide proof. (*Keller*, at p. 1399.)"

Duran v. U.S. Bank (2014) 59 Cal.4th 1, 28-30.

B. Cal. Lab. Code § 2699 provides:

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section

2699.3.

(b) For purposes of this part, "person" has the same meaning as defined in Section 18.

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e)(1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g)(1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not

supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l)(1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.

(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.

(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

There are two recent published California appellate cases involving PAGA claims. The first case was disposed by a defense motion for summary judgment. The second case proceeded to trial.

In the first case, *Donohue v. AMN Services, LLC*, 29 Cal. App. 5th 1068 (2018), plaintiff Donohue sued her former employer, AMN Services, LLC (AMN) on behalf of herself individually and a class of similar situated AMN employees and former employees, alleging failure to provide meal and rest periods in violation of Labor Code sections 226.7 and 1197.1, among other claims. The trial court granted the defense motion for summary judgment by AMN and denied motions for summary adjudication brought by plaintiff Donohue, individually and on behalf of five certified plaintiff classes she represented. The Fourth District Court of Appeal, Division One, affirmed (Irion, J.). Review has been granted by the Supreme Court.

In the second case, *Carrington v. Starbucks*, 30 Cal. App. 5th 504 (2018), plaintiff Carrington filed a complaint against her former employer, Starbucks, asserting a representative cause of action under PAGA. She claimed Starbucks failed to properly provide meal breaks or pay meal period premiums for certain employees in violation of Labor Code sections 226.7 and 512. In a bifurcated bench trial on plaintiff Carrington's action, the trial court determined Starbucks was liable for the violations and imposed penalties of \$150,000, with 75% payable to the LWDA and 25% payable to plaintiff Carrington and the employees she represented in the action. The trial court entered judgment in plaintiff Carrington's favor. Starbucks appealed and contended plaintiff Carrington failed to prove she is an

aggrieved employee and failed to prove a representative claim. The Fourth District Court of Appeal, Division One, affirmed (Guerrero, J.).

Several years ago, this court was affirmed in significant part in another PAGA case that is not infrequently cited: *Thurman v. Bayshore Mgmt.*, 203 Cal. App. 4th 1112 (2012). That case proceeded to appellate review following a multi-phase bench trial. *Thurman* is probably not good law anymore based on last year's decision by the Supreme Court in *ZB, N.A. v. Superior Court*, 8 Cal 5th 175 (2019).

C. Labor Code 1194 provides:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

D. Labor Code §510 states:

(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

E. Labor Code §226 provides:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the

information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of a person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e)(1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2)(A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

(C) For purposes of this paragraph, "promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

(3) For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

(f) A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

(g) The listing by an employer of the name and address of the legal entity that secured the services of the employer in the itemized statement required by subdivision (a) shall not create any liability on the

part of that legal entity.

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(i) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

(j) An itemized wage statement furnished by an employer pursuant to subdivision (a) shall not be required to show total hours worked by the employee if any of the following apply:

(1) The employee's compensation is solely based on salary and the employee is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission.

(2) The employee is exempt from the payment of minimum wage and overtime under any of the following:

(A) The exemption for persons employed in an executive, administrative, or professional capacity provided in any applicable order of the Industrial Welfare Commission.

(B) The exemption for outside salespersons provided in any applicable order of the Industrial Welfare Commission.

(C) The overtime exemption for computer software professionals paid on a salaried basis provided in Section 515.5.

(D) The exemption for individuals who are the parent, spouse, child, or legally adopted child of the employer provided in any applicable order of the Industrial Welfare Commission.

(E) The exemption for participants, director, and staff of a live-in alternative to incarceration rehabilitation program with special focus on substance abusers provided in Section 8002 of the Penal Code.

(F) The exemption for any crew member employed on a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code provided in any applicable order of the Industrial Welfare Commission.

(G) The exemption for any individual participating in a national service program provided in any applicable order of the Industrial Welfare Commission.

F. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1040 (2012), the High Court summarized its holding as follows: "An employer's duty with respect to meal breaks under both section 512, subdivision (a) and Wage Order No. 5 is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so. What will suffice may vary from industry to industry, and we cannot in the context of this class certification proceeding delineate the full range of approaches that in each instance might be sufficient to satisfy the law."

G. Labor Code §512(a) states:

"An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

The California Supreme Court has made it clear that the employer must provide the first meal period before the start of the sixth hour. *Brinker, supra*, 53 Cal. 4th at 1041 and 1049.

3. Standards for Preliminary Approval/PAGA Approval.

Under Labor Code section 2699(l)(2), the court must "review and approve any settlement of any civil action pursuant to this part." The criteria for review and approval is not well developed in the California case law. By contrast, there are numerous California cases suggesting judicial approaches to approval of class action settlements, including *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 240; and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

Under these cases, the factors to be considered by the court include:

- A. Strength of plaintiff's case. This is the most important factor.
- B. Expense associated with taking the case to trial, *i.e.*, the avoided cost of further litigation.
- C. Amount or value offered in settlement.
- D. Extent of discovery completed and state of proceedings.
- E. Experience and views of counsel.
- F. Presence of a governmental participant.
- G. Reaction of class members to proposed settlement.

The court sees no reason why items A-F from this list should not provide guidance in the PAGA setting; obviously item G does not apply. The aggrieved workers are entitled to no notice and have no opt out rights. *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Item G does apply to the class allegations.

4. Analysis of Settlement Terms.

The court incorporates part 4 of the minutes for the original preliminary approval hearing (ROA 162). The key details of the initial settlement were as follows:

Class members: 17,775
Gross Settlement Amount: \$910,000.00, no reversion to defendants.
Class Counsel Attorney's Fees: \$273,000.00 (30%).
Class Counsel Litigation Costs: Not to exceed \$22,500.00.
Settlement Administration Costs: Not to exceed \$42,000.00 (CAC Services).
Incentive Award to Class Representative: \$3,000.00.
PAGA payment: \$19,000.00 (75% share of \$25,333.33 allocation).
Net Settlement Amount: approximately \$513,833.34.

For sake of comparison, the revised deal is as follows:

Size of class: 29,788 individuals
Gross settlement amount ("GSA"): \$1,204,095.22
Claims administration: \$42,000.00 (maximum amount to be paid from GSA)
Costs/expenses of litigation: \$22,500.00
Claims Period: 30 days from Mailing of Notice
Class representative incentive: \$3,000.00
LWDA payment: \$19,000.00 (75% Share of \$25,333.33 allocation)

Attorney's fees: \$273,000.00 (22.67 % of the GSA)

5. Discussion and Ruling.

The defendants face, according to the representations of counsel, fundamental competitive challenges and severe financial distress which threaten the continued operations of the enterprise. To their credit, class counsel did not seek a higher fee when the gross settlement went up as the result of the marked increase in class size. To the contrary, the newly discovered class members are receiving equal treatment without dilution via transaction costs. Under these circumstances, the court again finds that there is good reason to believe that, if notice is given as proposed, there is a good chance the settlement will meet with the general approbation of the putative class. Accordingly, preliminary approval of the settlement is granted, and notice to the expanded class is ordered. Counsel must bring the appropriate orders to the hearing so they may be handed up and signed.

*The indiscriminate use of the phrase "cause of action" to mean "count" is discussed in section 25 of the Witkin treatise on Pleading (Cal. Procedure, 4th Ed. at p. 87). It is also discussed at pp. 394-395 of the Supreme Court's opinion in *Baral v. Schnitt*, 1 Cal.5th 376 (2016).

The Motion Hearing (Civil) is scheduled for 05/29/2020 at 01:30PM before Judge Timothy Taylor.

IT IS SO ORDERED.



Judge Timothy Taylor

EXHIBIT D

FILED
Clerk of the Superior Court

APR 23 2021

By: C. Beutler, Deputy

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego
04/01/2021 at 04:38:23 PM
Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHRISTINE CLARK, in a Representative
capacity, and on behalf of other members of
the general public similarly situated,

Plaintiff,

v.

ANNTAYLOR RETAIL, INC., a Florida
Corporation, ANN INC., a Delaware
Corporation, ASCENA RETAIL GROUP,
INC., a Delaware Corporation,
CATHERINES, INC., a Delaware
Corporation; THE DRESS BARN, INC., a
Connecticut Corporation, TWEEN
BRANDS, INC., a Delaware Corporation,
LANE BRYANT, INC., a Delaware
Corporation, MAURICES,
INCORPORATED, a Delaware Corporation,
and DOES 1-4, inclusive

Defendants

CASE NO. 37-2019-00013185-CU-OE-CTL

CLASS ACTION

**[PROPOSED] ORDER: (1) GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND (2) ENTERING
JUDGMENT**

Dept.: C-69

Judge: Hon. Katherine Bacal

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiff CHRISTINE CLARK's Unopposed Motion for Final Approval of (1) Class Action Settlement; (2) Attorneys' Fees and Costs; and (3) Class Representative Enhancement, in the above-captioned matter, came on for hearing before this Court on April 23, 2021 at 1:30 p.m. Sullivan & Yacckel Law Group, APC appeared on behalf of Plaintiff and the Class; Morgan, Lewis & Bockius LLP appeared on behalf of Defendant. On good cause shown, and pursuant to the authority of

1 California statutory and case law, this Court finds that the settlement between Plaintiff and Defendants
2 was made in good faith and is fair, reasonable and adequate. The Court grants the motion and enters
3 judgment consistent with the following:

4 **IT IS HEREBY ORDERED THAT:**

- 5 1. Plaintiff's Motion for Final Approval of (1) Class Action Settlement; (2) Attorneys' Fees and
6 Costs; and (3) Class Representative Enhancement Award, is hereby granted.
- 7 2. Pursuant to this Court's Preliminary Approval Order of February 22, 2021 the Notice of Class
8 Action Settlement (the "Class Notice") was sent to the Class, which was previously certified
9 in this Court's Preliminary Approval Order, in the manner specified by the parties Joint
10 Stipulation of Class Action Settlement and Release and the parties "Addendum to Joint
11 Stipulation of Class Action Settlement and Release" (collectively these documents are referred
12 to as the "Settlement"). (The Settlement Agreement and Addendum thereto is on file with the
13 Court's Register of Actions # 23, as **Exhibit A**, and Registrar of Actions # 74 as **Exhibit 1**.)
14 The Class Notice informed the Class of the terms of the Settlement, their right to receive their
15 proportional share of the Settlement by not opting out, their right to request exclusion, and their
16 right to object to the Settlement. Adequate periods of time were provided by each of these
17 procedures.
- 18 3. Out of a total of 20,733 Class Members who were sent notice, Eight (8) have requested
19 exclusion and "Opted-Out" of the settlement. As confirmed by the Settlement Administrator,
20 the names of the eight Opt-Outs are: Sandra L. Arredondo, Diana L. Bridges, Bianeth
21 Gonzalez, Carol Lynn Clark, Madeleine Hang, Evelyn Morales, Alana Andrews-Jones, and
22 Elizabeth Narcizo.
- 23 4. Zero (0) members of the Class objected to the Settlement.
- 24 5. The Court finds and determines that this notice procedure afforded adequate protections to
25 Class Members and fully and accurately informed the class of all material aspects of the
26 settlement. The Court finds the and determines that the notice provided in this case was the
27 best notice practicable, which satisfied the requirements of law and due process.
- 28 6. The Court further finds and determines that the terms of the Settlement are fair, reasonable and

adequate to the Class and to each Class Member. The Class Members who have not expressly sent a request for exclusion ("Opt-Out"), will be bound by the Settlement. The Settlement is ordered finally approved, and that all terms and provisions of the Settlement should be and hereby are ordered to be consummated.

7. The Court finds and determines that the Settlement sums to be paid to the Class Members as provided for by the Settlement are fair and reasonable. The Court hereby gives final approval to and orders the payment of those amounts be made to the Class Members in accordance with the terms of the Settlement.

8. The Court finds the payment of \$37,500.00 (75% Share of \$50,000.00 allocation) to the Labor and Workforce Development Agency ("LWDA") in settlement of the LWDA's share of the penalties alleged by Plaintiff and compromised under the Settlement is fair and reasonable.

9. The Court finds and determines that the Class Representative Enhancement Payment to Plaintiff, Christine Clark, in the sum of \$5,000.00, in consideration for her service as the Class Representative, is fair and reasonable. The Court hereby gives final approval to and orders that the payment of the Enhancement be paid as provided by the Settlement Agreement.

10. The Court finds and determines that the total payment to the Claims Administrator, CAC Services Group LLC, in the sum of \$85,921.82 for claims administration expenses in completing its duties pursuant to the terms of the Settlement is fair and reasonable. The Court hereby gives final approval to and orders that the payment of said amount be paid from the as provided for by the Settlement Agreement.

11. The Court finds and determines that the payment of \$500,000.00 as Class Counsel's Attorney's Fees and request for \$26,000.00 for costs of litigation, is fair and reasonable. The Court hereby gives final approval to and orders those amount(s) be paid to the Sullivan & Yaeckel Law Group, APC, out of the total settlement amount in accordance with the terms of the Settlement Agreement.

12. All "Released Claims" against Defendants by the "Class Members" (as these terms are defined the parties' Settlement Agreement) that have been, or might have been, asserted by any Class Member who did not timely submit a Request for Exclusion, in accordance with the terms of

1 the Settlement Agreement, are hereby released, and all such Class Members shall be forever
2 barred from pursuing any of the Released Claims as set forth in the Settlement Agreement
3 against the Released Parties.

4 13. Accordingly, the Court enters this judgment consistent with the above and the parties'
5 Settlement.

6 14. Pursuant to California Rules of Court, rule 3.769(h), this Court retains jurisdiction over the
7 parties to enforce this judgment.
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9 **IT IS SO ORDERED.**

10 Dated: 4/23/21
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12 HON. KATHERINE BACAL
13 JUDGE OF THE SUPERIOR COURT
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FILED
Clerk of the Superior Court

MAR 29 2021

By: H. CHAVARIN, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ARMANDO HERNANDEZ and JAMES
HOPPER, Individually, and on behalf of
other members of the public similarly
situated,

Plaintiff,

v.

SPECTRUM SECURITY SERVICES, INC.,
a California Corporation, and DOES 1-10,
inclusive

Defendants

CASE NO. 37-2018-00048710-CU-OE-CTL

CLASS ACTION

**[PROPOSED] ORDER: (1) GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND (2) ENTERING
JUDGMENT**

Date: March 26, 2021

Time: 10:30 am

Dept.: C-64

Judge: Hon. John S. Meyer

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiffs' Unopposed Motion for Final Approval of (1) Class Action Settlement; (2) Attorneys' Fees and Costs; and (3) Class Representative Enhancement, in the above-captioned matter, came on for hearing before this Court on March 26, 2021 at 10:30 a.m. Sullivan & Yaeckel Law Group, APC appeared on behalf of Plaintiffs and the Class; David Carrothers of Tremblay Beck Law, APC appeared on behalf of Defendant. On good cause shown, and pursuant to the authority of California statutory and case law, this Court finds that the settlement between Plaintiffs and Defendants was made in good faith and is fair, reasonable and adequate. The Court grants the motion and enters judgment consistent with the following:

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Motion for Final Approval of (1) Class Action Settlement; (2) Attorneys' Fees and Costs; and (3) Class Representative Enhancement Award, is hereby granted.
2. Pursuant to this Court's Preliminary Approval Order of December 18, 2020 the Notice of Class Action Settlement (the "Class Notice") was sent to the Class, which was previously certified in this Court's Preliminary Approval Order, in the manner specified by the parties Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement."). (The Settlement Agreement is on file with the Court's Register of Actions # 117 as Exhibit 1.) The Class Notice informed the Class of the terms of the Settlement, their right to receive their proportional share of the Settlement by not opting out, their right to request exclusion, and their right to object to the Settlement. Adequate periods of time were provided by each of these procedures.
3. Out of a total of 467 Class Members who were sent notice, One individual has requested exclusion and "Opted-Out" of the settlement.
4. Zero (0) members of the Class objected to the Settlement.
5. The Court finds and determines that this notice procedure afforded adequate protections to Class Members and fully and accurately informed the class of all material aspects of the settlement. The Court finds the and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process.
6. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate to the Class and to each Class Member. The Class Members who have not expressly sent a request for exclusion ("Opt-Out"), will be bound by the Settlement. The Settlement is ordered finally approved, and that all terms and provisions of the Settlement should be and hereby are ordered to be consummated.
7. The Court finds and determines that the Settlement sums to be paid to the Class Members as provided for by the Settlement are fair and reasonable. The Court hereby gives final approval to and orders the payment of those amounts be made to the Class Members in accordance with the terms of the Settlement.

- 1 8. The Court finds the payment of \$45,000.00 (75% Share of \$60,000.00 allocation) to the Labor
2 and Workforce Development Agency ("LWDA") in settlement of the LWDA's share of the
3 penalties alleged by Plaintiffs and compromised under the Settlement is fair and reasonable.
- 4 9. The Court finds and determines that the Class Representative Enhancement Payments to
5 Plaintiffs, Armando Hernandez, in the sum of \$7,500.00, and to James Hopper, in the sum of
6 \$5,000 as consideration for their service as the Class Representatives, is fair and reasonable.
7 The Court hereby gives final approval to and orders that the payment of the Enhancements be
8 paid as provided by the Settlement Agreement.
- 9 10. The Court finds and determines that the total payment to the Claims Administrator, CAC
10 Services Group LLC, in the sum of \$6,814.69 for claims administration expenses in
11 completing its duties pursuant to the terms of the Settlement is fair and reasonable. The Court
12 hereby gives final approval to and orders that the payment of said amount be paid from the as
13 provided for by the Settlement Agreement.
- 14 11. The Court finds and determines that the payment of \$376,666.62 as Class Counsel's
15 Attorney's Fees and request for \$18,042.42 for costs of litigation, is fair and reasonable. The
16 Court hereby gives final approval to and orders those amount(s) be paid to the Sullivan &
17 Yaeckel Law Group, APC, out of the total settlement amount in accordance with the terms of
18 the Settlement Agreement.
- 19 12. All "Released Claims" against Defendants by the "Class Members" (as these terms are defined
20 the parties' Settlement Agreement) that have been, or might have been, asserted by any Class
21 Member who did not timely submit a Request for Exclusion, in accordance with the terms of
22 the Settlement Agreement, are hereby released, and all such Class Members shall be forever
23 barred from pursuing any of the Released Claims as set forth in the Settlement Agreement
24 against the Released Parties.
- 25 13. Accordingly, the Court enters this judgment consistent with the above and the parties'
26 Settlement Agreement.

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1 14. Pursuant to California Rules of Court, rule 3.769(h), this Court retains jurisdiction over the
2 parties to enforce this judgment.

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4 IT IS SO ORDERED.

5 Dated: 3-29-21
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HON. JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT

FILED
Clerk of the Superior Court

MAY 12 2021

By: R. Cersosimo, Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

ANDREW RASMUSSEN, in a
Representative Capacity only, and on
behalf of other members of the public
similarly situated,

Plaintiff,

v.

CUSTOMIZED SERVICES
ADMINISTRATORS, INC., a California
Corporation; GENERALI GLOBAL
ASSISTANCE, INC., a New York
Corporation; and DOES 1-10, inclusive,

Defendants.

CASE NO. 37-2020-00008581-CU-OE-CTL

(Class and Representative Action)

**ORDER: (1) GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT (2) ATTORNEYS' FEES
AND COSTS; AND (3) ENTERING
JUDGMENT**

Date: May 7, 2021

Time: 10:30 a.m.

Dept.: C-68

Judge: Hon. Richard S. Whitney

Complaint Filed: February 14, 2020

1 Plaintiff ANDREW RASMUSSEN's Unopposed Motion for Final Approval of (1) Class
2 Action Settlement; (2) Attorneys' Fees and Costs; and (3) Class Representative Enhancement, in
3 the above-captioned matter, came on for hearing before this Court on May 7, 2021 at 10:30 a.m.
4 Sullivan Law Group, APC appeared on behalf of Plaintiff and the Class; Gordon Rees Scully
5 Mansukhani, LLP, appeared on behalf of Defendant. On good cause shown, and pursuant to the
6 authority of California statutory and case law, this Court finds that the settlement between
7 Plaintiff and Defendants was made in good faith and is fair, reasonable and adequate. The Court
8 grants the motion and enters judgment consistent with the following:

9 **IT IS HEREBY ORDERED THAT:**

- 10 1. Plaintiff's Motion for Final Approval of (1) Class Action Settlement; (2) Attorneys'
11 Fees and Costs; and (3) Class Representative Enhancement Award, is hereby granted.
- 12 2. Pursuant to this Court's Preliminary Approval Order of December 22, 2020 the
13 Notice of Class Action Settlement (the "Class Notice") was sent to the Class, which
14 was previously certified in this Court's Preliminary Approval Order, in the manner
15 specified by the parties Joint Stipulation of Class Action Settlement and Release
16 ("Settlement Agreement."). (The Settlement Agreement is on file with the Court's
17 Register of Actions # 22 as Exhibit A.) The Class Notice informed the Class of the
18 terms of the Settlement, their right to receive their proportional share of the
19 Settlement by not opting out, their right to request exclusion, and their right to object
20 to the Settlement. Adequate periods of time were provided by each of these
21 procedures.
- 22 3. Out of a total of 229 Class Members who were sent notice, Zero (0) have requested
23 exclusion and "Opted-Out" of the settlement.
- 24 4. Zero (0) members of the Class objected to the Settlement.
- 25 5. The Court finds and determines that this notice procedure afforded adequate
26 protections to Class Members and fully and accurately informed the class of all
27 material aspects of the settlement. The Court finds the and determines that the notice
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provided in this case was the best notice practicable, which satisfied the requirements of law and due process.

6. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate to the Class and to each Class Member. The Class Members who have not expressly sent a request for exclusion ("Opt-Out"), will be bound by the Settlement. The Settlement is ordered finally approved, and that all terms and provisions of the Settlement should be and hereby are ordered to be consummated.

7. The Court finds and determines that the Settlement sums to be paid to the Class Members as provided for by the Settlement are fair and reasonable. The Court hereby gives final approval to and orders the payment of those amounts be made to the Class Members in accordance with the terms of the Settlement.

8. The Court finds the payment of \$7,500.00 (75% Share of \$10,000.00 allocation) to the Labor and Workforce Development Agency ("LWDA") in settlement of the LWDA's share of the penalties alleged by Plaintiff and compromised under the Settlement is fair and reasonable.

9. The Court finds and determines that the Class Representative Enhancement Payment to Plaintiff, Andrew Rasmussen, in the sum of \$500.00, in consideration for his service as the Class Representative, is fair and reasonable. The Court hereby gives final approval to and orders that the payment of the Enhancement be paid as provided by the Settlement Agreement.

10. The Court finds and determines that the total payment to the Claims Administrator, CPT Group, Inc, in the sum of \$8,800.00 for claims administration expenses in completing its duties pursuant to the terms of the Settlement is fair and reasonable. The Court hereby gives final approval to and orders that the payment of said amount be paid from the as provided for by the Settlement Agreement.

11. The Court finds and determines that the payment of \$60,000.00 as Class Counsel's Attorney's Fees and request for \$10,000.00 for costs of litigation, is fair and

1 reasonable. The Court hereby gives final approval to and orders those amount(s) be
2 paid to the Sullivan & Yaeckel Law Group, APC, out of the total settlement amount
3 in accordance with the terms of the Settlement Agreement.

4 12. Plaintiff and Class Counsel may adequately represent the California Settlement Class
5 Members, and the FLSA Collective Members for the purpose of entering into and
6 implementing the Agreement.

7 13. All "Released Claims" against Defendant by the "Class Members"(as these terms are
8 defined Proposed Order the parties' Settlement Agreement) that have been, or might
9 have been, asserted by any Class Member who did not timely submit a Request for
10 Exclusion, in accordance with the terms of the Settlement Agreement, are hereby
11 released, and all such Class Members shall be forever barred from pursuing any of the
12 Released Claims as set forth in the Settlement Agreement against the Released
13 Parties.

14 14. As of the Final Approval Date, the Plaintiff, California Settlement Class Members,
15 and the FLSA Settlement Collective Members, and their Legally Authorized
16 Representatives, heirs, estates, trustees, executors, administrators, principals,
17 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming
18 through them or acting or purporting to act for them or on their behalf, regardless of
19 whether they have received actual notice of the proposed Settlement, have
20 conclusively compromised, settled, discharged, and provided: the Complete and
21 General Release (in the case of Plaintiffs); the release of California Settlement Class
22 Members Released Claims (in the case of the California Settlement Class Members);
23 and release of FLSA Settlement Collective Members Released Claims (in the case of
24 FLSA Settlement Collective Members) against CSA and the Released Parties, and
25 are bound by the provisions of this Settlement Agreement.

26 15. Notwithstanding the submission of a timely request for exclusion, Class Members are
27 still bound by the settlement and release of the PAGA Claims or remedies under the
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Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests for exclusion do not apply to the PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are also extinguished.

16. The Settlement Agreement and the Final Approval order and Judgment are binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that encompass Plaintiff's, California Settlement Class Members', and the FLSA Settlement Collective Members' claims released herein, and that are maintained by or on behalf of Plaintiff, California Settlement Class Members, and the FLSA Settlement Collective Members and/or their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf.

17. Plaintiff, the California Settlement Class Members, and the FLSA Settlement Collective Members are permanently barred from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the claims released herein.

18. Accordingly, the Court enters this judgment consistent with the above and the parties' Settlement Agreement.

19. The Settlement provided for herein, and any proceedings undertaken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or that PAGA representative claims may validly be pursued; provided, however, that reference may be made to this Settlement in such proceedings as may be necessary to effectuate the provisions of this Settlement.

1 20. Without affecting the finality of the Final Approval order and Judgment, the Court
2 retains continuing jurisdiction over Plaintiff, Defendant, the California Settlement
3 Class Members, and the FLSA Settlement Collective Members as to all matters
4 concerning the administration, consummation, and enforcement of this Settlement
5 Agreement pursuant to California Rules of Court, rule 3.769(h).

6 **IT IS SO ORDERED.**

7
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9 Dated:

5-12-21

By: 

HON. RICHARD S. WHITNEY
JUDGE OF THE SUPERIOR
COURT

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/10/2020

TIME: 09:00:00 AM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Patricia Ashworth

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2019-00017152-CU-OE-CTL** CASE INIT.DATE: 04/02/2019

CASE TITLE: **Soto vs RVR Rancho Valencia Resort Partners LLC [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

Eric K. Yaeckel, counsel, present for Plaintiff(s) telephonically.

Travis K Jang-Busby, counsel, present for Defendant(s) telephonically.

The Court confirms the tentative ruling as follows:

TENTATIVE RULING

The unopposed motion of plaintiff Michelle Soto, individually and on behalf of the class, for final approval of the class action settlement with time defendants RVR Rancho Valencia Holdings, L.P and Rancho Valencia Resort Partners, LLC is granted. The proposed order granting final approval of the class action settlement should be revised to include the disposition of the employee's funds which were uncashed or undeliverable to the class members. Plaintiff's counsel is prepared to go to the courthouse early and stay latter to see whether any class members arrive to object or challenge the settlement. (Anderson decl., ¶19.)

The second amended complaint was provided to the Labor and Workforce Development Agency as required by Labor Code section 2699(I)(1). The settlement provides for the payment of \$15,000.00 to the Labor and Workforce Development Agency ("L WDA") in settlement of the LWDA's share of the penalties. Plaintiffs Michelle Soto and Aaron Colony are entitled to \$5,000.00 each, in consideration for their services as the class representatives.

The terms are fair and in compliance with the requirements of *Dunk v. Ford Motor Co.* (1996)48 Cal. App. 4th 1794, 1800-1801.

Eddie C. Sturgeon

Judge Eddie C Sturgeon

EXHIBIT E

PROPOSED FEES & EXPENSES

RE: Hild v. Westside Building Material Corporation - PAGA

Proposal Dated: May 27, 2022

CAC SERVICES GROUP - CONFIDENTIAL

Key Assumptions						
Class Size - Class Members				144	Persons	
Settlement Checks & Notice						
Direct Mail	(% of Total Class)		100%	144	Pieces	
Returned Mail Processing						
RFND	(% of Total Class)		15.0%	22	Pieces	
ACPO	(% of Total Class)		1.5%	2	Pieces	
Program Requirements		Estimated Quantity	Units	Per Unit	Cost	Estimated Total
Program Set-Up & Reporting						\$ 250.00
Class Member Database	1	N/A	\$ 250.00	\$ 250.00		
Direct Mail Notification						\$ 538.50
NCOA / CASS / LACS Processing	1	N/A	\$ 75.00	\$ 75.00		
Letter & Check	144	Pcs	\$ 3.000	\$ 432.00		
The notice package includes the following:						
▶45# 8.5" x 11" Notice - English (1 page)		▶#10 Window Envelope - Security Tint				
▶60# MOCR Bond 8.5" x 11" Check; Top Third Tear-Away						
Re-issue Lost or Destroyed Checks	7	Pcs	\$ 4.500	\$ 31.50		
Returned Mail Processing						\$ 111.80
Notices Returned for Non-Delivery (RFND)						
Process RFND Mail	22	Pcs	\$ 0.250	\$ 5.50		
Skip Trace RFND Mail	22	Pcs	\$ 0.900	\$ 19.80		
Re-print Check/Notice Package	17	Pcs	\$ 4.500	\$ 76.50		
Estimate: 75% of RFND is traceable						
Notices returned as Address Change Post Office (ACPO)						
Process ACPO Mail	2	Pcs	\$ 0.500	\$ 1.00		
Re-print Check/Notice Package	2	Pcs	\$ 4.500	\$ 9.00		
Fund Management						\$ 576.00
Check Clearing	144	Pcs	\$ 0.25	\$ 36.00		
Fund Management / Bank Fees	6	Months	\$ 40.00	\$ 240.00		
Annual Fee - Qualified Settlement Fund Taxes	1	Years	\$ 150.00	\$ 150.00		
Federal & State Filings						
Individual Income Tax Reporting	1	Years	\$ 150.00	\$ 150.00		
Quarterly & Yearly Filings						
Postage ¹⁾						\$ 90.10
Postage - Check/Notice Package	144	Pcs	\$ 0.530	\$ 76.32		
Postage - Remails, Check/Notice Package	26	Pcs	\$ 0.530	\$ 13.78		

Program Requirements	Estimated Quantity	Units	Per Unit	Cost	Estimated Total
Program Management					\$ 1,220.00
Principal Consultant	0.5	Hours	\$ 150.00	\$ 75.00	
Project Manager	1	Hours	\$ 125.00	\$ 125.00	
Technical Consultant	4	Hours	\$ 135.00	\$ 540.00	
Support Staff	8	Hours	\$ 60.00	\$ 480.00	
Grand Total ²⁾					\$ 2,786.40



Other Project-Related Costs	Units	Cost
FedEx / UPS Shipments	N/A	At Cost
Photocopies	Per Copy	\$ 0.15
Storage of 1.2 Cubic Foot Boxes	Box/Month	\$ 0.75
Removal and Secured Destruction of 1.2 Cubic Foot Boxes	Per Box	\$ 3.00
Project-Related Materials	N/A	At Cost
Other Case-Related Out-of-Pocket Expenses	N/A	At Cost

Other CAC Services ³⁾	Hourly Rate
Principal Consultant	\$ 150.00
Senior Consultant	\$ 140.00
Technical Consultant	\$ 135.00
Project Manager	\$ 125.00
Project Supervisor	\$ 100.00
Support Staff	\$ 60.00

Notes:

- 1) Postage is estimated and will be qualified for automation discounts.
- 2) The grand total reflects the estimated quantities of individual tasks performed. Should the actual quantities differ from the estimated quantities of tasks performed, the grand total (billable amount) will reflect such changes. Estimates were based on the assumptions listed above.
- 3) Fees for project-related services, other than what is covered elsewhere in this proposal, will be charged at CAC's standard hourly rate shown above. The above rates are effective as of May 2022. The rates are subject to possible revision on an annual basis, during the contract period, to allow for possible hourly rate changes.



EXHIBIT F

NOTICE OF PAGA SETTLEMENT

Lance Hild v. Westside Building Material Corporation

(Superior Court of California for the County of San Diego, Case No. 37-2021-00041781-CU-OE-CTL)

[ADMINISTRATOR]

P.O. Box _____

Telephone: _____

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff is Lance Hild, and the Defendant is Westside Building Material Corporation. (“Defendant”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all individuals who worked for Defendant in California who were employed during the PAGA Period (“PAGA Group Employees”). The PAGA Period is July 8, 2020, through **Date of Court Approval**.

It is important to note that Defendant denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the Action, and the Court has approved the settlement and release of the PAGA claims. The Settlement resolves all PAGA claims alleged in the Action, including all remedies available under Labor Code section 2699 et. seq., for violations of the California Labor Code governing: meal and rest breaks, unpaid wages, minimum wage, overtime pay, wage statements, business expense reimbursement, and final pay. This settlement does not preclude you from bringing claims against Defendant in your individual capacity.

The Release of claims in this litigation involved only the PAGA representative claims alleged in the Action. By accepting this check you still retain all of your rights in your individual capacity and you are not precluded from bringing your own individual claims.

By Order dated **Date of Court Approval**, the Superior Court approved the Settlement and the release of the Claims. According to the Defendants’ records, you are a PAGA Group Employee and therefore entitled to a share of the settlement based upon the Court approved allocation.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Plaintiff nor Defendant have made any representations or warranties regarding the taxation of your Individual PAGA Payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to the Settlement Administrator using the contact information at the top of this correspondence.