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ENEDINA SANCHEZ DE SEGURA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ENEDINA SANCHEZ DE SEGURA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

KELCOURT PLASTICS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No. 30-2021-01219806-CU-OE-CXC

*[Assigned for all purposes to the Hon. Randall J.
Sherman, Dept. CX105]*

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Date: November 3, 2023

Time: 10:00 a.m.

Dept.: CX105

Reservation No.: 74015581

[Complaint Filed: September 3, 2021]

[SAC Filed: June 5, 2023]

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Enedina Sanchez de Segura (“Plaintiff”), jointly and on behalf of a class of similarly
3 situated individuals, hereby submits this Supplemental Brief in Support of Plaintiff’s Motion for
4 Preliminary Approval of Class Action (the “Motion”).

5 **I. PROCEDURAL HISTORY**

6 Plaintiff filed the Motion for Preliminary Approval of Class Action Settlement on May 15, 2023,
7 setting it for hearing on August 4, 2023. (ROA No 149).

8 Prior to the hearing, the Court posted the tentative ruling and continued the hearing to November
9 3, 2023 at 10:00 a.m.

10 The tentative ruling identified the following issues for the Parties to address: (i) determination of
11 whether escalator clause is triggered prior to Class Notice; (ii) estimated low and high payments to class
12 members; (iii) tax allocation. Consistent therewith, Plaintiff hereby submits the instant supplemental
13 brief (and accompanying declaration) to address the issues identified in the tentative ruling. Each of the
14 issues are addressed in the same order as they are identified in the tentative ruling.

15 **II. ISSUES IDENTIFIED IN THE TENTATIVE RULING**

16 **A. Escalator Clause Determination**

17 The tentative ruling states that:

18 The Class Period is defined as September 3, 2017 through March 11, 2023. If
19 triggered, the escalator clause in §5(F) of the settlement agreement provides for defendant’s
20 option of either an increase in the settlement amount or a change to the Class Period such
21 that some of the class members receiving the class notice will no longer be included in the
22 settlement. However, this court will not approve a settlement that results in class members
23 being told they are in the class but later being told they are not in the class. Thus, defendant
24 will have to either rely on or take another look at its workweek estimate as of almost five
25 months ago, March 11, 2023. If the parties want to leave in the option calling for a reduction
26 of the class period, rather than just an increase in the settlement amount, they must
27 determine before preliminary approval if the escalator clause applies.

28 **1. Escalator Clause**

The Parties’ intent is for the Settlement Administrator to verify the workweeks prior to the Class
Notice being mailed to Class Members. Pursuant to §12(A) of the Settlement Agreement, Defendant
Kelcourt Plastics, Inc. (“Defendant”) is required to provide the Class Data to the Settlement Administrator
within 20 days after entry of an order granting preliminary approval. After the Settlement Administrator

1 receives the Class Data and verifies the workweeks and prior to the Class Notice being mailed, the
2 Settlement Administrator will advise the Parties if the Escalator Clause is triggered. If the Escalator
3 Clause is triggered, Defendant will then have 14 days to notify Plaintiff's counsel of its election to either:
4 (1) increase the Gross Settlement Amount on a proportional basis (*i.e.*, if there was 12% increase in the
5 number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement
6 Amount by 2%); or (2) end the Class Period and PAGA Period, including the releases, on the first date on
7 which the Workweeks worked by the Class Members is 35,884.20 or more. If Defendant elects to shorten
8 the class period, the Settlement Administrator would advise of new shortened end date of the Class
9 Period/PAGA Period based on its review of the workweek and would then only mail the Class Notice to
10 individuals who are Class Members based on the shortened Class Period/PAGA Period.

11 The Proposed Order submitted concurrently herewith also includes language clarifying the Class
12 Period is September 3, 2017 through March 11, 2023, unless the Escalator Clause is triggered and
13 Defendant elects to shorten the Class Period pursuant to § 5(F) of the Settlement Agreement. Therefore,
14 Class Notice would not be mailed with inaccurate information. Whether the Escalator Clause is triggered
15 and the option Defendant elects will be determined prior to the Class Notice being mailed and will either
16 accurately reflect the increased Gross Settlement Amount or a shortened Class Period.

17 2. **Escalator Clause is Not Triggered**

18 In light of the Court's Tentative Ruling, Defendant has already provided the data to the Settlement
19 Administrator. The Settlement Administrator has confirmed that there are 29,896 workweeks worked by
20 the Settlement Class Members between September 3, 2017 through March 11, 2023. Supplemental
21 Declaration of Elizabeth Nguyen in support of Supplemental Brief ("Supp Nguyen Decl."), ¶ 2. As such,
22 the escalator clause is not expected to be triggered and if preliminary approval is granted, the Class Period
23 is September 3, 2017 through March 11, 2023.

24 **B. Estimated Average Payment**

25 The tentative ruling states:

26 Although the motion provides the estimated average payment to class members under the
27 proposed settlement, it fails to provide the estimated high and low payments. Those
28 estimates are needed to assist the court in properly determining the fairness of the proposed
settlement to the class. If those figures are not available now, they must be provided in the
motion for final approval.

1 The Settlement Administrator has advised that based on the data provided by Defendant, the
2 estimated average, low, and high payments are as follows:

Payment	Class	PAGA
Average	\$5,054.47	\$231.48
High	\$12,513.78	\$373.11
Low	\$43.45	\$2.83

7 Supp. Nguyen Decl., ¶ 2.

8 **C. Tax Allocation**

9 The tentative ruling states: “The allocation of only 25% of the settlement payments for wages
10 appears to be low. The estimated exposure analysis in the motion allocates more than 70% of the class
11 members’ potential (non-PAGA) recovery to wages. Either an increase to 33 1/3% or an adequate
12 explanation of why the figure is not at least 33 1/3% is required.”

13 The Parties have agreed to a tax allocation of 33.33% wages and 66.67% of penalties and interest
14 and have memorialized this agreement in the First Amendment to Stipulation of Class and PAGA Action
15 Settlement. The First Amendment to Stipulation of Class and PAGA Action Settlement executed by the
16 Parties is attached as **Exhibit A** to the Supp. Nguyen Decl.

17 The redlined version of the Class Notice reflecting the updated tax allocation of 33.33% wages
18 and 66.67% of penalties and interest is attached as **Exhibit B** to the Supp. Nguyen Decl.

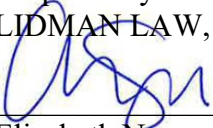
19 **D. Proposed Hearing Date**

20 The Parties propose March 29, 2024 as the hearing date for the Final Approval Hearing.

21 **III. CONCLUSION**

22 For the reasons stated herein, Plaintiff respectfully submit that this Court should grant Plaintiff’s
23 Motion and enter the [Amended Proposed] Order Granting Preliminary Approval of Class Action
24 Settlement submitted herewith.

25 Dated: October 18, 2023

26 Respectfully submitted,
27 LIDMAN LAW, APC
28 By: 
Elizabeth Nguyen
Attorney for Plaintiff
ENEDINA SANCHEZ DE SEGURA