

FILED
Superior Court of California
County of Los Angeles

10/03/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: D. Wortham Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JUSTIN AVALOS, individually, and on behalf
of other members of the general public similarly
situated;

Plaintiff,

v.

INDIO PRODUCTS, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20STCV40470

Assigned for All Purposes to:
Honorable Elihu M. Berle
Department 6

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: September 29, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department 6

Complaint Filed: October 19, 2020
FAC Filed: February 15, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Justin Avalos' ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Joint Stipulation and Settlement Agreement ("Settlement
4 Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as follows:

5 Plaintiff and Defendant Indio Products, Inc. ("Defendant") entered the Settlement
6 Agreement on or about February 7, 2022, to settle this class action lawsuit.

7 The Court entered an Order dated June 15, 2022 preliminarily approving the settlement of
8 this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
9 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
10 Members, scheduling a Final Approval Hearing on September 29, 2022, and providing Class
11 Members with an opportunity to object to the Settlement or exclude themselves from the Class.

12 The Court held a Final Approval Hearing on September 29, 2022, to determine whether
13 to give final approval to the Settlement of this class action lawsuit. During the Final Approval
14 Hearing, the Court granted final approval of the Settlement Agreement. However, the Court
15 reduced the requested Attorney Fee Award to one-third (1/3) of the Gross Settlement Amount.
16 The Court also reduced the Class Representative Enhancement Payment to \$7,500. Afterwards,
17 the Court set an Order to Show Cause hearing. Finally, the Court ordered Plaintiff to file an
18 updated Order of Final Approval and Judgment ("Order and Judgment") that reflects the above-
19 mentioned reductions and Order to Show Cause hearing date.

20 1. Incorporation of Other Documents. This Order and Judgment incorporates the
21 Settlement Agreement. Unless otherwise provided herein, all capitalized terms in this Order and
22 Judgment shall have the same meaning as set forth in the Settlement Agreement.

23 2. Jurisdiction. Because adequate notice has been disseminated and the Class been
24 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the
25 claims of all Class Members. The Court also has subject matter jurisdiction over this lawsuit,
26 including jurisdiction to approve the Settlement, and grants final certification of the Class.

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1 3. Final Class Certification. The Court finds the Class satisfies all applicable
2 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
3 process. The Court certifies the Class consisting of all California non-exempt employees of
4 Defendant during the time period from July 5, 2016, to December 31, 2021 (“Class” and “Class
5 Period”). There are one hundred six (106) Class Members who did not submit a valid and timely
6 request to exclude themselves from the Settlement (“Participating Class Members”).

7 4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-
8 Gharajeh, and Chancellor Nobles of Justice Law Corporation have fully and adequately
9 represented the Class for purposes of entering and implementing the Settlement and have
10 satisfied the requirements of Code of Civil Procedure section 382.

11 5. Notice Packet. The Court finds the Notice of Class Action and PAGA Settlement
12 (“Class Notice”) and the Election Not To Participate In (“Opt Out From”) Settlement
13 (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its distribution to Class
14 Members have been implemented pursuant to the Settlement and this Court’s Preliminary
15 Approval Order. The Court also finds the Notice Packet:

16 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
17 the pendency of the class action lawsuit; (ii) the material terms and provisions of the Settlement
18 and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to
19 exclude themselves from the Settlement; (v) their right to claim an Individual Settlement Share;
20 (vi) their right to appear at the Final Approval Hearing; and (vii) the binding effect of the orders
21 and judgment in the class action lawsuit on all Participating Class Members;

22 b. constitutes notice that fully satisfied the requirements of Code of Civil
23 Procedure section 382, California Rule of Court 3.769, and due process;

24 c. constitutes the best practicable notice to Class Members under the
25 circumstances of the class action lawsuit; and

26 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

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1 6. Final Settlement Approval. The terms and provisions of the Settlement
2 Agreement have been entered in good faith and are the product of arm's-length negotiations by
3 experienced counsel who have done a meaningful investigation of the claims. The Settlement
4 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
5 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
6 Settlement Agreement according to its terms and provisions.

7 7. Binding Effect. The terms and provisions of the Settlement and this Order and
8 Judgment are binding on Plaintiff, the Participating Class Members, and the Eligible Aggrieved
9 Employees, as well as their spouses, heirs, registered domestic partners, executors,
10 administrators, successors, and assigns, and those terms shall have res judicata and other
11 preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by
12 or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings
13 involve matters that were or could have been raised in the class action lawsuit and are
14 encompassed by the Released Claims and Private Attorneys General Act of 2004 ("PAGA")
15 Released Claims. The Settlement will have no binding effect upon, and provide no res judicata
16 preclusion to, those Class Members who have submitted timely requests for exclusion.

17 8. Release of Claims. As of the Effective Final Settlement Date, ^{and full payment ,} in exchange for the
18 consideration set forth in the Agreement, Plaintiff and the Participating Class Members release
19 the Released Parties from the Released Claims for the Class Period.

20 a. PAGA Release. As of the Effective Final Settlement Date, ^{and full payment ,} LWDA, and each
21 Eligible Aggrieved Employee, including Plaintiff, individually and on behalf of
22 their heirs, executors, administrators, representatives, attorneys, successors, and
23 assigns voluntarily and knowingly are barred from bringing any action for the
24 PAGA Released Claims during the PAGA Period.

25 b. Plaintiff's Release of Claims and General Release. As of the Effective Final
26 Settlement Date, ^{and full payment} and in exchange for the Class Representative Enhancement
27 Payment to Plaintiff, in recognition of his work and efforts in obtaining the
28 benefits for the Class and undertaking the risk for the payment of costs if this

1 matter had not successfully resolved, Plaintiff provides a general release of claims
2 for himself and his spouse, heirs, successors, and assigns. Plaintiff's general
3 release of claims also includes a waiver of Civil Code section 1542.

- 4 c. Released Parties. The Released Parties are Defendant and its present and former
5 officers, directors, employees, shareholders, agents, trustees, representatives,
6 attorneys, insurers, reinsurers, parent and related companies, subsidiaries,
7 divisions, affiliates, predecessors, successors, and assigns, and all of their present
8 and former officers, directors, employees, shareholders, agents, trustees,
9 representatives, attorneys, insurers, reinsurers, parent and related companies,
10 subsidiaries, divisions, affiliates, predecessors, successors, and assigns.

11 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
12 any action to enforce the terms and provisions of the Settlement Agreement.

13 10. Class Representative Enhancement Payment. The Court finds the Class
14 Representative Enhancement Payment of \$7,500, to be paid by Defendant to Plaintiff out of the
15 Gross Settlement Amount, to be reasonable and appropriate. Class Representative Enhancement
16 Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

- 17 a. The rationale for making enhancement payments is class representatives should
18 be compensated for the expense and risk they incurred in conferring a benefit on
19 the Class. Criteria courts consider include: (1) risk to the class representatives in
20 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
21 effort spent by the class representatives; (4) duration of the litigation; and (5)
22 personal benefit (or lack thereof) enjoyed by class representatives.

- 23 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
24 risks inherent in his services as the Class Representative, duration of the case and
25 time involved, and benefits created for the Class, the Court approves the payment
26 of the Class Representative Enhancement Payment of \$7,500 to Plaintiff.

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11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award of \$138,750, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to be reasonable and appropriate. The Court finds the Cost Award as reimbursement for actual litigation costs incurred of \$13,403.92, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or related in any manner to the class action and PAGA lawsuit, the Settlement, the Settlement administration, and/or the Released Claims and PAGA Released Claims.

a. The Court has an independent right and responsibility to review the requested Attorney Fee Award and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The Attorney Fee Award requested by Class Counsel of \$138,750 is one-third (1/3) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method.¹ (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the exceptional results achieved, financial risk undertaken, novel and difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the requested Attorney Fee Award is consistent with the marketplace, is reasonable, and is approved.

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¹ The Escalator Clause in section III(M)(17) of the Settlement Agreement was triggered, which increased the Gross Settlement Amount from \$375,000 to \$416,250. Since the Attorney Fee Award is one-third (1/3) of the Gross Settlement Amount, the Attorney Fee Award has also increased to \$138,750. 6

b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class Counsel expended \$13,403.92 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the Cost Award of \$13,403.92 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Costs. The Court finds Administration Costs of \$3,700, to be paid by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court reviewed the declaration of Christina Fowler from Simpluris, Inc. ("Simpluris"), the Court-approved Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, the notice constitutes the best practicable notice to the Class, and the notice satisfied due process. Thus, the Court approves the payment of the Administration Costs of \$3,700 for Simpluris' services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) will be distributed to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$5,000) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate.² The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding of the Settlement. Defendant shall fund the Gross Settlement Amount of \$416,250 in two separate payments. The first half payment of \$208,125, plus Defendant's share of employer-side payroll taxes on this first half payment, shall be due at final approval. The second half payment of \$208,125, plus Defendant's share of employer-side payroll taxes on this second half payment, shall be due one hundred eighty (180) days after final approval.

² Since none of the Class Members are also Eligible Aggrieved Employees, the Parties agreed the twenty-five percent (25%) of the PAGA Payment (\$5,000) that would have been

Afterwards, within fourteen (14) calendar days after the Settlement Administrator receives the entire Gross Settlement Amount, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement.

15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the Settlement is entitled to a presumption of fairness. In his moving papers, Plaintiff contends the Settlement was the product of arm's-length negotiations following extensive litigation, discovery, and exchange of documentation. The negotiations were facilitated with the aid of mediator Jeffrey Krivis, who is an experienced and well-respected class action mediator.

a. The fairness of the Settlement is demonstrated by there being no objections to and no requests for exclusion from the Settlement.

b. The fairness of the Settlement is also illustrated by the *average* Individual Settlement Share being approximately \$2,155.27, and the *highest* Individual Settlement Share being about \$9,106.18.

16. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. Uncashed settlement checks will be paid to the California State Controller's Office in accordance with California Unclaimed Property Law.

17. Modification of Settlement Agreement. The Participating Class Members are hereby authorized, upon approval of the Court, to agree to and adopt amendments to or modifications of the Settlement Agreement by an express written instrument signed by counsel for all Parties or their successors-in-interest. Such amendments or modifications shall be consistent with this Order and Judgment and cannot limit the rights of Participating Class Members under the Settlement Agreement.

18. Final Accounting and Compliance. The Court sets a final accounting and compliance date for May 30, 2023 at 8:30 a.m. in Department 6. Plaintiff shall file a report and declaration of compliance by May 22, 2023.

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allocated to Eligible Aggrieved Employees will be a part of the Net Settlement Amount.

1 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
2 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
3 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
4 and for any other necessary purpose, including, without limitation:

- 5 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
6 claims, or causes of action in the class action that, in whole or in part, are related
7 to or arise out of the Settlement or this Order and Judgment;
- 8 b. entering such additional orders as may be necessary or appropriate to protect or
9 effectuate this Order and Judgment approving the Settlement, and permanently
10 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
11 fair and orderly administration of the Settlement; and
- 12 c. entering any other necessary or appropriate orders to protect and effectuate this
13 Court's retention of continuing jurisdiction.

14 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
15 Award, and Class Representative Enhancement Payment is GRANTED. The Settlement
16 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

17 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
18 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
19 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
20 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
21 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
22 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
23 THE JUDGMENT THEREON.

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25 IT IS SO ORDERED.



Elihu M. Berle

26
27 DATED: 10/03/2022

Elihu M. Berle / Judge

HONORABLE ELIHU M. BERLE
SUPERIOR COURT JUDGE

