

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LIZETTE RODRIGUEZ (SBN 335182)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

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

MAYDA AGUIRRE and ROBERT
RODRIGUEZ, individually, and on behalf of
other members of the general public similarly
situated;;

Plaintiffs,

v.

ORMCO CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 22STCV12358
[Consolidated with Case No. 21STCV36034;
22PSCV00363]

Assigned for All Purposes to:
Honorable Stuart M. Rice
Department 1

CLASS ACTION

**PLAINTIFFS' SUPPLEMENTAL BRIEF
IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[Supplemental Declaration of Proposed Class
Counsel (Douglas Han); and Amended
[Proposed] Order filed concurrently herewith]

Hearing Date: August 24, 2023
Hearing Time: 4:00 p.m.
Hearing Place: Department 1

Complaint Filed: April 12, 2022
Trial Date: None Set

Plaintiffs Erika Morrow, Daniel Alcocer, Mayda Aguirre, and Robert Rodriguez (“Plaintiff Morrow,” and “Plaintiff Alcocer,” “Plaintiff Aguirre,” and “Plaintiff Rodriguez”, collectively, “Plaintiffs”) provide this supplemental submission in response to the Court’s tentative ruling on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement originally scheduled for hearing on July 13, 2023. On July 11, 2023, prior to the scheduled preliminary approval hearing, the Court issued a tentative ruling ordering Plaintiffs and Defendant Ormco Corporation (“Defendant”) to make several changes to the Class, Collective, and Representative Action Settlement Agreement (“Settlement” or “Settlement Agreement”) and Notice of Class Action Settlement (“Notice of Settlement”).

The chart below lists each of the Court’s concerns from the tentative ruling and the revisions/submissions made to address each concern.

Ruling	Revisions/Submissions
Attorney Han represents that counsel reviewed time records and pay records, among other information, prior to settlement. (Han Decl. ¶ 17.) If a sampling of records/data was provided, brief as to the percentage of data reviewed, why the sampling should be considered statistically significant, and whether any expert analysis supported the conclusion that the sampling was sufficient to provide useful data.	Defendant provided Plaintiff a statistically significant random sampling of time and pay records for sixty-five (65) employees of the approximately two hundred twelve (212) employees that make up the Class. This sample size represents about thirty percent (30%) of the Class. The sample used utilized a 10.15% margin of error and a confidence level of 95%. Statistically, the 10.15% margin of error is well within the acceptable margin of error. (See <i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal.App.4th 715 [accepting a 9.6% margin of error as acceptable but rejecting

32.4 margin of error as too high].) For settlement purposes, a 10.15% margin of error is well within the *Bell* standard and is an adequate sample size to extrapolate the violation rates and potential damages to the entire Class. This sampling of time and pay records covers the time period from April 2017 to October 2022, which was extrapolated by Plaintiff's expert after reviewing the random sampling of time and pay records. Defendant assembled this sampling using the records of putative class members. Because this sample was drawn randomly from the records of putative class members, it is representative of the Class. (Supp. Han Decl., *supra*, at ¶ 4;)

The Motion and Settlement Agreement (¶2.2) say Plaintiff Morrow was compelled to arbitration and has her class claims dismissed without prejudice. How can she be considered adequate to represent the class? Also considering that the Class Members definition specifically covers "Class Members who have *not entered into an arbitration agreement or release agreement with Ormco.*" (SA ¶1.9).

Plaintiff Morrow was the first to file her class action on behalf of all hourly-paid or non-exempt employees of Defendant within the State of California from April 4, 2017 to final judgment. Unfortunately, Plaintiff Morrow's claims were compelled to arbitration and her class claims dismissed based on the arbitration agreement signed. However, Plaintiff Morrow's participation in her action and the information she provided as a putative class

representative was paramount to the eventual resolution of this case. As such, although Plaintiff Morrow is not a member of the settlement class as defined, she was an active participant in this class action. In *Etter v. Thetford Corp.*, the Ninth Circuit found that a plaintiff that was not a member of the settlement class, was an active participant in the class action and his efforts on behalf of the class members merit an incentive award. Case No. SACV 13-00081-JLS, 2016 U.S. Dist. LEXIS 203655 at * 73.

(Supp. Han Decl., *supra*, at ¶ ;5)

Are all five named Plaintiffs direct employees of Defendant Ormco? See SA ¶1.9, fn 1 (“For avoidance of doubt, Class Members, Collective Members, and PAGA Employees do not include any individuals employed by a third-party staffing agency and assigned to work at Ormco’s facilities, unless those individuals became direct employees of Ormco ...”).

Plaintiffs Mayda Aguirre and Robert Rodriguez were direct employees of Defendant Ormco. Plaintiffs Erika Morrow and Daniel Alcocer were not direct employees of Defendant Ormco. (Supp. Han Decl., *supra*, at ¶ 5.) However, as explained earlier, Plaintiff Morrow’s participation in her action and the information she provided as a putative class representative was paramount to the eventual resolution of this case. (Supp. Han Decl., *supra*, at ¶ 5.). Additionally, Plaintiff Alcocer undertook a serious reputational risk by being a named representative and acting as a private

1		attorney general on behalf of the representative
2		class—risks that the courts have found merit
3		service awards. <i>See Rodriguez v. West Publ’g</i>
4		<i>Corp.</i> , 563 F.3d 948, 958–959 (9 th Cir. 2009).
5		(Supp. Han Decl., <i>supra</i> , at ¶ 6.) Further, there
6		is no authority establishing that an individual
7		cannot serve as a representative of aggrieved
8		employees in a PAGA Action if they are not
9		part of the group on whose behalf a settlement
10		is reached. There are no typicality
11		requirements.
12	File the First Amended Consolidated	The First Amended Consolidated Complaint
13	Complaint (Ex. 2 to Han Decl.) as a	was filed on August 14, 2023. (Supp. Han
14	standalone document with the Court.	Decl., <i>supra</i> , at ¶ 7; Exhibit 7).
15		
16		
17		
18	If approval of settlement of a PAGA claim is	A copy of Plaintiff Aguirre’s notice of letter to
19	requested provide a copy of Plaintiff’s notice	the LWDA has been attached to the
20	letter to the LWDA.	Supplemental Declaration of Douglas Han.
21		(Supp. Han Decl., <i>supra</i> , at ¶ 3; Exhibit 6)

1 2 3 4 5 6 7	If notice will be given in English only, explain why this is sufficient.	Defendant’s counsel filed the Declaration of Timothy M. Rusche, verifying that the Notice of Settlement does not need a translation. <i>See</i> Declaration of Timothy M. Rusche in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶ 2. (Supp. Han Decl., <i>supra</i> , at ¶ 8.)
8 9 10	The “PAGA Employees” definition in the Notice is not provided in the Settlement Agreement. Please resolve.	The Settlement Agreement has been amended accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 9; Exhibit 4, <i>supra</i> , at ¶ 1.32)
11 12 13 14 15 16 17 18 19 20	See ¶8.1. Modify the releases of claims to specify that Class Members will only release claims alleged in, or arising out of facts asserted in, the operative First Amended Consolidated Complaint. The release of PAGA claims should be separated (see below).	The Settlement Agreement has been revised to include a separate PAGA Release. (Supp. Han Decl., <i>supra</i> , at ¶ 10; Exhibit 4, <i>supra</i> , at ¶ 8.2). Additionally, the Settlement Agreement has been revised so that the California Released Claims specifies that Settlement Class Members will only release claims that were alleged in, or arising out of facts asserted in the First Amended Consolidated Complaint. (<i>Id.</i> at ¶ 11; Exhibit 4, <i>supra</i> , at ¶¶8.1, 8)
21 22 23 24 25	The release language at ¶8.1 appears to be potentially overbroad – why would it be proper for the class to release claims “of whatever kind or nature, whether known or unknown, contingent or accrued”?	The Settlement Agreement has been amended accordingly, removing the overbroad language. (Supp. Han Decl., <i>supra</i> , at ¶ 14; Exhibit 4, <i>supra</i> , at ¶ 8.1, 8.2 and 8.4)
26 27 28	How would it be proper for the class, FLSA	The Settlement Agreement has been amended

1 2 3	and PAGA releases to extend to class members' spouses?	accordingly, removing spouses from the releases. (Supp. Han Decl., <i>supra</i> , at ¶ 15; Exhibit 4, <i>supra</i> , at ¶¶ 8.1, 8.2 and 8.4)
4 5 6 7 8 9 10 11	Eliminate any language indicating that this court will enjoin future lawsuits by class members. See SA ¶¶9.1, 9.2, 9.5. The court will not issue injunctive relief against absent class members. The effectiveness of the release comes from satisfaction of due process requirements for notice and an opportunity to opt out or be heard.	The Settlement Agreement has been amended accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 16; Exhibit 4, <i>supra</i> , at ¶¶ 9.1, 9.2, 9.5.)
12 13 14 15 16 17 18 19 20 21 22	The PAGA Release at Notice p. 8 is not provided in the Settlement Agreement. Further, the PAGA Release should be limited to claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint (of the PAGA Action) and Plaintiff's PAGA Notice. Please resolve.	The Settlement Agreement has been amended to include the same PAGA release as the Notice of Settlement. (Supp. Han Decl., <i>supra</i> , at ¶ 10; Exhibit 4, <i>supra</i> , at ¶8.2). The PAGA release was amended accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 12; Exhibit 4, <i>supra</i> , at ¶8.2) The Notice of Settlement has been amended accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 13; Exhibit 5, <i>supra</i> , at p. 8.)
23 24 25	Modify the effective date of the releases to be the date on which Defendant fully funds the settlement. (SA ¶8.1, 8.3, and PAGA release)	The Settlement Agreement has been amended accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 17; Exhibit 4, <i>supra</i> , at ¶¶ 8.1, 8.2 and 8.4.)
26 27 28	Class Data: If there are confidentiality	Maintaining the class contact information

provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel's ability to discharge fiduciary duties. • See Settlement Agreement ¶5.3.	confidential will not impede Class Counsel's ability to discharge their fiduciary duties because class members' will have Class Counsel's contact information and may contact them at any time if they have any questions about the settlement. Keeping contact information confidential is in the class members' best interest because a <i>Belair West</i> notice process was not completed during the litigation process thereby—as such, keeping their contact information confidential prevents any possible privacy infringement. (Supp. Han Decl., <i>supra</i>, at ¶ 18.)
If wages are involved, explain how Defendant's share of taxes will be paid. • Notice p. 6 states that Defendant will separately pay employer payroll taxes it owes on the Wage Portion to the Settlement Administrator for payment to the taxing agencies. This should be clearly stated within the Settlement Agreement as well.	The Settlement Agreement has been amended accordingly. (Exhibit 4, <i>supra</i>, at ¶¶ 8.1, 8.2 and 8.4.) Defendant will pay its share of payroll taxes separate from the Gross Settlement Amount. Defendant will deposit its share of employer payroll taxes within 25 business days of the Effective Date. (Supp. Han Decl., <i>supra</i>, at ¶ 19; Exhibit 4, <i>supra</i>, at ¶¶ 1.21, 3, 7.1, 7.8 and 7.8.1).
How did the parties arrive at the determination that splitting the settlement payments 90% to	The parties determined that the allocation of payments between the FLSA release and the

the California Release and 10% to the FLSA release would be fair to the class? SA ¶7.62.

California Release is sensible because (1) the California statute of limitations period is longer, (2) there are multiple different State claims involved, not just unpaid wages, and (3) the State has multiple different penalties available for each different underlying state law violation. (Supp. Han Decl., *supra*, at ¶ 20). Because of the foregoing, it is reasonable to estimate the 90 percent of the exposure is based on California law claims rather than FLSA claims.

Indicate the administrator for the settlement and why the bid for administration is fair.

- The administrator says administration costs will be capped at \$9,000. (Lawrence Decl. ¶16.) Why would it be necessary for the agreement to provide for administration costs up to \$20,000? (SA ¶7.2)

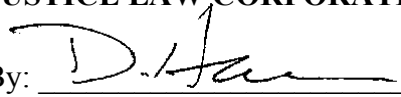
The Settlement Agreement has been amended accordingly. (Supp. Han Decl., *supra*, at ¶ 3; Exhibit 4, *supra*, at ¶ 7.2.)

After further review, Plaintiff's counsel has asked the Settlement Administrator to provide an updated bid to account for the FLSA payments. To date, we have not yet received the updated bid. However, the parties request the Court to conditionally approve administration costs not to exceed \$15,000 to account for the likely change in administration costs. Upon the court's approval, the Notice of Settlement will be amended to increase the administration cost. (Supp. Han Decl., *supra*,

1		at ¶ 25.)
2	The class and PAGA releases disclosed to	The Settlement Agreement has been amended
3	Class Members in the notice should be	to include the same PAGA release as the
4	verbatim to the releases in the Settlement	Notice of Settlement. The PAGA release was
5	Agreement. See the class and PAGA release	amended accordingly. (Supp. Han Decl.,
6	language at Notice pp. 7-8, ¶¶9-10. The	supra, at ¶ 13; Exhibit 4, supra, at ¶8.2)
7	Notice says releases occur upon Defendant	
8	fully funding the Gross Settlement, which is	The Notice of Settlement has been amended
9	not reflected in the Settlement Agreement's	accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 3;
10	release language. The FLSA release language	Exhibit 5, <i>supra</i> , at p. 8.)
11	should also be provided in the Notice.	
12	The heading on the first page of the Notice	The Notice of Settlement has been amended
13	should prominently state the case number,	accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 3;
14	names of the parties, and the Court and county	Exhibit 5, <i>supra</i> , at p. 1.)
15	where the case is filed.	
16	The Notice at p. 10 section 9 specifies the	The Notice of Settlement has been amended
17	wrong Court Department number. Please	accordingly. (Supp. Han Decl., supra, at ¶ 3;
18	revise.	Exhibit 5, supra, at p. 11.)
19	Indicate how and when payments will be	Individual Settlement Payments and Plaintiffs'
20	processed.	service awards will be issued by the
21	• SA ¶7.7 says the administrator will issue	Settlement Administrator no later than 35
22	payments to the class no later than 35 business	business days after the Effective Date. (Supp.
23	days from the Effective Date, while ¶7.4.2	Han Decl., <i>supra</i> , at ¶ 22; Exhibit 4, supra, at
24	says it will issue service awards to the	¶¶ 7.4.2 and 7.7)
25	Plaintiffs within 25 business days from the	
26	Effective Date. How would it be proper for	

1	Plaintiffs to receive payments before the class	
2	does?	
3	The Settlement Agreement attached to	The Amended Settlement Agreement has been
4	attorney Han's declaration is not signed by	signed by the Parties and their counsel. (Supp.
5	Plaintiff's counsel, Defendant, or Defendant's	Han Decl., ¶ 23; Exhibit 4.)
6	counsel. Any future revised copies must be	
7	fully executed by all parties and counsel	
8	before the Court can grant approval.	
9	The settlement terms described in the Notice	The Notice of Settlement has been amended to
10	form contain numerous inconsistencies from	be consistent with the changes made to the
11	the terms of the agreement. See, e.g., the	Settlement Agreement. (Supp. Han Decl.,
12	individual payment tax allocations at Notice p.	<i>supra</i> , at ¶ 23; Exhibits 2 and 3)
13	6 para 4 (compare to SA ¶7.8), the timeline	
14	for funding the settlement at Notice p. 5	
15	(compare to SA ¶7.1), and the settlement	
16	administrator (SA says Phoenix, Notice says	
17	CPT). Carefully review and ensure	
18	consistency in all terms across both	
19	documents.	
20	Provide proof of submission of the proposed	The Amended Settlement Agreement has been
21	settlement agreement to the LWDA. (Lab.	submitted to the LWDA. (Supp. Han Decl.,
22	Code, § 2699, subd. (l)(2).)	<i>supra</i> , at ¶ 10; Exhibit 8.)

Dated: August 14, 2023

JUSTICE LAW CORPORATION
 By: 
 Douglas Han
 Shunt Tatavos-Gharajeh
 Attorneys for Plaintiffs

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On August 14, 2023, I served the foregoing document described as

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

for the following case: **Aguirre, et al. v. Ormco Corporation**
LWDA/Court Case No.: **LWDA-CM-855085-21**
Case No. 22STCV12358
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on August 14, 2023, at Pasadena, California.



Mariah Anderson