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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

BRITTANY DAM, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

RUBBER-CAL, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 30-2020-01176087-CU-OE-CXC

Assigned for All Purposes to:
Honorable Peter Wilson
Department CX-102

CLASS ACTION

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

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

Hearing Date: April 14, 2022
Hearing Time: 2:00 p.m.
Hearing Place: Department CX-102

Complaint Filed: December 23, 2020
FAC Filed: December 6, 2021
Trial Date: None Set

Plaintiff Brittany Dam (“Plaintiff”) provides this supplemental submission in response to the Court’s tentative ruling on Plaintiff’s Motion for Preliminary Approval of Class Action Settlement originally scheduled for hearing on March 10, 2022. On March 9, 2022, the Court continued the hearing to April 14, 2022, with instructions to address the concerns outlined in the ruling.

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
<u>As to the Settlement</u> (1) The Response Deadline is 60 calendar days from the initial mailing of the Notice for requests for exclusion or objections. There does not appear to be any provision in the Settlement to extend the Response Deadline based on re-mailed notices, but the Class Notice extends the deadline 10 days.	Section III (K)(2)(c) of the Settlement Agreement provides: “Those Class Members who receive a re-mailed Class Notice, whether by skip trace or forwarded mail, will have an additional ten (10) calendar days to postmark an Exclusion Form or an objection to the Settlement.” (Supplemental Declaration of Douglas Han (“Supp. Han Decl.”), ¶ 4.) This sentence has been amended to specify that Class Members who receive a re-mailed Class Notice will have an additional ten (10) calendar days <i>from the original Response Deadline</i> to request exclusion or object. (<i>Ibid.</i> ; Exhibit 2, § III (K)(2)(c).) The definition of Response Deadline has also been amended to provide that Class Members who receive a re-mailed Class Notice will have an additional ten (10) calendar days, for a total of seventy (70) calendar days from the initial mailing of the Class Notice, to request exclusion or object

		to the Settlement. (Supp. Han Decl., at ¶ 4; Exhibit 2, at § I (JJ).)
(2)	Paragraph III.K.2.d appears to require Class Members to submit documentary evidence in support of any dispute on workweeks or pay periods, but documentary evidence is not required. Given that Plaintiff alleges being required to work off-the-clock, it appears unfair to provide that Defendant's records are "presumed determinative".	The Settlement Agreement has been amended to address these issues. (Supp. Han Decl., <i>supra</i> , at ¶ 5; Exhibit 2, <i>supra</i> , at § III (K)(2)(d).) The Class Notice has also been amended accordingly. (Supp. Han Decl., at ¶ 5; Exhibit 3, §§ 10, 11.)
(3)	Who is responsible for payment of any fees or costs incurred if the Settlement Administrator purchases an annuity as an attorney fee deferral vehicle as permitted in ¶III.H.7.b?	The Settlement Agreement has been amended to address this issue. (Supp. Han Decl., <i>supra</i> , at ¶ 6; Exhibit 2, <i>supra</i> , at § III (H)(7)(b).)
(4)	The requirements for objections in ¶III.K.3.a are too onerous. Class Members need only provide a concise, factual statement of their reasons for objection. The requirement for legal support, lists of witnesses and exhibits, and providing a notice of appearance 15 days before the Final Approval Hearing should be removed.	The Settlement Agreement and Class Notice have been amended accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 7; Exhibit 2, <i>supra</i> , at §§ III (K)(3)(a)-(b); Exhibit 3, <i>supra</i> , at § 8.)
(5)	Since the Settlement Administrator represents its fees will not exceed \$8,500, why should the Court preliminarily approve \$10,000?	Although the Settlement Administrator represents that its fees will not exceed \$8,500, the Parties have asked the Court to preliminarily approve \$10,000 in Administration Costs to account for the

	possibility of additional unanticipated costs that may arise during the notice and distribution process. (Supp. Han Decl., <i>supra</i>, at ¶ 8.) Such unanticipated costs would necessarily not be included in bid provided by the Settlement Administrator that provides for a capped fee of \$8,500. (<i>Ibid.</i>) The Parties have included this buffer to avoid the problem of having to decide from where or by whom additional funds to cover any such anticipated costs would be taken or paid. (<i>Ibid.</i>)
(6) The Court has wide discretion on assessing the reasonableness of fees, including basing fees on the percentage of fund method, conducting a lodestar cross-check on a percentage fee, or foregoing a lodestar cross-check and using other means to evaluate the reasonableness of a requested percentage fee. At final approval Counsel should provide billing records in support of its fees and documentation of its costs. Further, Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel, or confirm none exist.	At final approval, Class Counsel will provide billing records in support of its fees and documentation of its costs and will disclose whether they have any fee-splitting arrangement with any other counsel, or confirm non exist. (Supp. Han Decl., <i>supra</i>, at ¶ 9.)
(7) The Court will determine the appropriate amount of Plaintiff's enhancement at final approval. At final approval, Plaintiff should submit a declaration addressing the factors set	At final approval, Plaintiff will submit a declaration addressing the factors set forth in <i>Golba v. Dick's Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272 and <i>Clark v. Am.</i>

forth in <i>Golba v. Dick's Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272 and <i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation.	<i>Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation. (Supp. Han Decl., <i>supra</i>, at ¶ 10.)
(8) With the motion for final approval, Plaintiff must present a full report to the Court on all disputes, exclusions and objections received. The Court will consider any objections at the final approval hearing.	With the motion for final approval, Plaintiff will present a full report to the Court on all disputes, exclusions, and objections received. (Supp. Han Decl., <i>supra</i>, at ¶ 11.)
(9) Along with the motion for final approval, the settlement administrator should provide an estimated high and low for individual settlement payments, along with Plaintiff's individual payouts.	Along with the motion for final approval, Plaintiff will submit a declaration from the Settlement Administrator providing an estimated high and low for individual settlement payments, along with Plaintiff's individual payouts. (Supp. Han Decl., <i>supra</i>, at ¶ 12.)
(10) The PAGA notice letter to the LWDA should be submitted to the Court.	The PAGA Notice is attached to the Supplemental Declaration of Douglas Han as Exhibit 4. (Supp. Han Decl., <i>supra</i>, at ¶¶ 3(c), 13.)
<u>Issues re Class Notice</u> (11) The Class Notice is to be revised consistent with the issues addressed above.	The Class Notice has been amended to be consistent with the changes made to the Settlement Agreement. (Supp. Han Decl., <i>supra</i>, at ¶ 14; Exhibit 3.)
(12) Confirm that the Class Notice will be mailed in English and Spanish, and that no other translations are necessary. Also, a	The Class Notice will be mailed in both English and Spanish. (Supp. Han Decl., <i>supra</i>, at ¶ 15; Exhibit 2, <i>supra</i>, at §§ I (I), III (I).) No

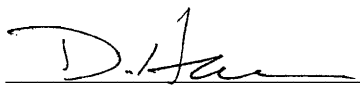
certified Spanish translation of the Class Notice must be included as an exhibit to the proposed Order.	other translations are necessary. (Supp. Han Decl., at ¶ 15.) The Declaration of Beau Pirghibi, the President and Chief Executive Officer of Defendant Rubber-Cal, Inc., has been filed concurrently herewith, confirming as such. (<i>Ibid.</i>) In addition, a certified Spanish translation of the Class Notice is attached together with an English version of the Class Notice as Exhibit B to the Amended [Proposed] Order (“Proposed Order”), filed concurrently herewith. (<i>Ibid.</i>)
(13) The Notice does not advise what will happen if a Class Member submits an objection form and a request for exclusion.	Section 7 of the Class Notice, entitled “How Do I Opt Out Or Exclude Myself From This Settlement?” provides that if a Class Member submits both an Exclusion Form and a written objection, the Exclusion Form will be deemed invalid, and the objection will remain valid. (Supp. Han Decl., <i>supra</i>, at ¶ 16; Exhibit 3, <i>supra</i>, at § 7.)
(14) August 18, 2022 is proposed as the date for the final approval hearing. Moving papers must be submitted at least 16 court days prior to the hearing for final approval and the LWDA must receive notice of the hearing for final approval.	Because the preliminary approval hearing was continued to April 14, 2022, the Parties propose a new date of September 15, 2022 for the final approval hearing. (Supp. Han Decl., <i>supra</i>, at ¶ 17; Exhibit 3, <i>supra</i>, at §§ 1, 13.) Plaintiff will submit all moving papers at least sixteen (16) court days prior to the final approval hearing and will provide notice to the LWDA of the final approval hearing. (Supp.

		Han Decl., at ¶ 17.)
Issues re Proposed Order		The Proposed Order, filed concurrently
(15) The proposed order is to be revised consistent with the issues addressed above.		herewith, has been amended to be consistent with the changes made to the Settlement Agreement and Class Notice. (Supp. Han Decl., <i>supra</i> , at ¶ 18.)
(16) The Settlement and Class Notice, including a certified Spanish translation, should be attached to the proposed order as an exhibit.		The Settlement Agreement and Class Notice, including a certified Spanish translation of the Class Notice, are attached as Exhibits A and B to the Proposed Order. (Supp. Han Decl., <i>supra</i> , at ¶ 19.)
(17) The proposed Order should include the definition for aggrieved employees.		The Proposed Order has been amended accordingly. (Supp. Han Decl., <i>supra</i> , at ¶ 20; Proposed Order, ¶ 3.)
(18) The proposed Order appears to require Class Members to object only in writing but Class Members are permitted to appear in person or through counsel at the Final Approval Hearing.		The Proposed Order has been amended to address this issue. (Supp. Han Decl., <i>supra</i> , at ¶ 21; Proposed Order, <i>supra</i> , at ¶ 13.)
(19) The Final Approval Hearing date in ¶15 needs to be revised to be consistent with the Class Notice.		The Proposed Order has been amended accordingly. (Supp. Han. Decl., <i>supra</i> , at ¶ 22; Proposed Order, <i>supra</i> , ¶ 15.)
(20) Paragraph 16 should be deleted.		The Proposed Order has been amended accordingly. (Supp. Han. Decl., <i>supra</i> , at ¶ 23.)
(21) The implementation schedule in ¶18 does not include the 10-day extension for submitting requests for exclusions, objections		The Proposed Order has been amended accordingly. (Supp. Han. Decl., <i>supra</i> , at ¶ 24; Proposed Order, <i>supra</i> , at ¶ 17.)

1 and deadlines for re-mailed notices.

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3 Dated: April 4, 2022

JUSTICE LAW CORPORATION

4 By: 
5 Douglas Han
6 Shunt Tatavos-Gharajeh
7 *Attorneys for Plaintiff*
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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 April 4, 2022, I served the foregoing document described as

for the following case:	Dam v. Rubber-Cal, Inc.
LWDA/Court Case No.:	LWDA-CM-852055-21
	30-2020-01176087-CU-OE-CXC
	Orange 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 April 4, 2022 at Pasadena, California.


Mariah Anderson