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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JESUS FUENTES, individually, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”);

Plaintiff,

v.

APEX CONTRACTING AND
RESTORATION, INC., a California
corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2022-00001417-CU-OE-CTL

Assigned for All Purposes to:
Honorable Ronald F. Frazier
Department C-65

CLASS ACTION

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

[Supplemental Declaration of Douglas Han;
Declaration of Eric Schweinfurter; and
Amended [Proposed] Order filed
concurrently herewith]

Hearing Date: December 22, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department C-65

Complaint Filed: January 12, 2022
FAC Filed: June 22, 2022
Trial Date: None Set

Plaintiff Jesus Fuentes (“Plaintiff”) provides this supplemental submission in response to the Court’s tentative ruling (and Minute Order) on Plaintiff’s Notice of Motion and Motion For Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class Notice, Setting of Final Approval Hearing Date; Memorandum of Points and Authorities In Support Thereof (“Motion”) originally scheduled for hearing on November 4, 2022. The Motion was continued to December 22, 2022 with instructions to address the issues outlined therein.

The chart below lists each of the Court’s issues from the tentative ruling (and Minute Order) and the revisions/submissions made to address each concern.

Ruling	Revisions/Submissions
(1) As a preliminary matter, Plaintiff did not submit evidence the proposed settlement was submitted to the Labor Workforce Development Agency (“LWDA”) as required by statute. (Lab. Code § 2699(1)(2).) Accordingly, the motion is continued to allow time for Plaintiff to comply with this requirement and submit a declaration from counsel confirming compliance.	(Supplemental Declaration of Douglas Han In Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement (“Supp. Han Decl.”), ¶ 5; Exhibit 3.)
(2) Plaintiff did not brief the issue of how the settlement will be funded in Plaintiff’s memorandum of points and authorities. From the court’s review of the proposed settlement agreement, the settlement will not be fully funded until over a year from now, and no distribution to the proposed settlement class will occur until after the settlement is fully funded. The court is concerned about how the	(Supp. Han Decl., <i>supra</i> , at ¶ 6.) (Declaration of Eric Schweinfurter.)

1 delay in distribution affects the value of the
2 settlement for the class and requests briefing
3 on this issue.
4

5 (3) Plaintiff also did not include the proposed
6 deadline for settlement class members to opt
7 out, dispute calculations, or object to the
8 proposed settlement. The court also requests
9 briefing on this issue but is not inclined to
10 approve a deadline of less than 90 days. As to
11 any notices that must be re-mailed, the
12 proposed class notice allows only an
13 additional 10 days. This court is inclined to
14 approve a deadline of 21 days.
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17

The Settlement Agreement has been modified
to address these issues.

(Supp. Han Decl., *supra*, at ¶ 10; Exhibit 4,
supra, at § I(JJ).))

(Supp. Han Decl., *supra*, at ¶ 11; Exhibit 4,
supra, at § III(H)(2)(d).))

The Class Notice has been modified to address
these issues.

(Supp. Han Decl., *supra*, at ¶ 12; Exhibit 6,
supra, at §§ 7-8, 10.))

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19 Dated: November 29, 2022

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21 By: 
22 Douglas Han
23 Attorneys for Plaintiff
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