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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 11 2023

By Wimala Blanchard
WIMALA BLANCHARD, Deputy

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel.: (951) 320-1444 | Fax: (951) 320-1445

Daniel F. Gaines, Esq. SBN 251488
daniel@gaineslawfirm.com
Alex P. Katofsky, Esq. SBN 202754
alex@gaineslawfirm.com
Evan S. Gaines, Esq. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Tel.: (818) 703-8985 | Fax: (818) 703-8984

Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title
(Rule 3.550)

Case No.: JCCP 5239
[Assigned to Dept. S26 for all purposes]

AMERICAN TIRE WAGE AND HOUR
CASES

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF JUDGMENT**

*Rafael Martinez, et al. v. American Tire
Distributors, Inc., et al.*
Case No.: CIVSB2133396
(San Bernardino Superior Court – 12-8-21)

*Germaine Tanner Sr., et al. v. American Tire
Distributors, Inc., et al.*
Case No.: 22CECG00735
(Fresno County Superior Court – 03-8-22)

Complaint Filed: December 8, 2021

1 The Motion for Final Approval of the Settlement (the "Final Approval Motion") as set
2 forth in the Class Action and PAGA Settlement Agreement and Release of Claims ("Settlement
3 Agreement") came for a hearing in the above-entitled court. The Final Approval Motion was
4 unopposed by Defendant American Tire Distributors, Inc. ("Defendant").

5 Having considered the Final Approval Motion, the Settlement Agreement, the
6 Declarations, and all other materials properly before the Court and having conducted an inquiry
7 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement
8 Agreement was entered by all parties in good faith, and the Settlement Agreement is approved.
9 Due and adequate notice having been given to the Class, and the Court having considered the
10 Settlement Agreement, all papers filed and proceedings had herein and all oral and written
11 comments received regarding the proposed settlement, and having reviewed the record in this
12 Action, and good cause appearing,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

14 1. The Court, for purposes of this Judgment and Order ("Judgment"), refers to all
15 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

16 2. The Court has jurisdiction over the subject matter over this Action, Class
17 Representatives Rafael Martinez and Germaine Tanner, Sr., the Class Members and Defendant.

18 3. The Court finds that the distribution of the Class Notice, as provided for in the
19 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
20 under the circumstances to all Class Members and fully met the requirements of California law
21 and due process under the California and United States Constitution. Based on evidence and
22 other material submitted, the actual notice to the class was adequate.

23 4. The Court finds that the instant Action presented a good faith dispute of the
24 claims alleged, and the Court finds in favor of settlement approval.

25 5. The Released Class Claims on behalf of the Participating Class Members
26 included:

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1 a. all claims alleged or those that could have been alleged in the Complaint,
2 which arose during the Class Period, and based solely upon the facts in the
3 Complaint, including: (a) failure to pay minimum wages, (b) failure to pay
4 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
5 breaks, (e) failure to timely pay wages upon separation of employment, (f)
6 failure to provide accurate itemized wage statements, (g) unfair and unlawful
7 competition, and (h) all other claims for statutory penalties based on the facts
8 or claims alleged in the Complaint (the “Released Class Claims”).

9 6. The Released PAGA Claims on behalf of the Aggrieved Employees included.

10 a. all PAGA claims that Plaintiffs alleged against the Released Parties, on behalf
11 of themselves and the State of California, based on the facts stated in the
12 Complaint and in the LWDA notice letters, including all PAGA claims
13 seeking civil penalties premised upon (a) failure to pay minimum wages, (b)
14 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure
15 to provide rest breaks, (e) failure to timely pay wages each period and upon
16 separation of employment, (f) failure to provide accurate itemized wage
17 statements, and (g) all other claims for civil penalties recoverable under
18 PAGA based on the facts or claims alleged in the Complaint (the “Released
19 PAGA Claims”). The time period governing the Released PAGA Claims
20 shall be any time during the PAGA Period of December 8, 2020, through
21 February 6, 2023.

22 7. There were no Objections to the Settlement, and no Requests for Exclusion.

23 Thus, all Class Members are Participating Class Members, who are entitled to an Individual
24 Class Payment pursuant to the Settlement and this Judgment. Likewise, all Aggrieved
25 Employees are entitled to an Individual PAGA Payment, constituting a pro rata share of PAGA
26 Penalties.

27 8. The Court approves the Settlement, as set forth in the Settlement Agreement and
28 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling

1 Parties. The Parties are directed to perform in accordance with the terms set forth in the
2 Settlement Agreement.

3 9. The Parties are to bear their own costs, except as otherwise provided in the
4 Settlement Agreement.

5 10. For purposes of effectuating this Order and Judgment, this Court has certified the
6 following class: "all current and former non-exempt employees of Defendant, who worked in
7 California at any time during the Class Period of June 16, 2019 to February 6, 2023." The Court
8 deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a).

9 11. With respect to the Class and for purposes of approving this Settlement, this Court
10 finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
11 joinder of all members is impracticable; (b) there are questions of law or fact common to the
12 Class Members, and there is a well-defined community of interest among the Class Members
13 with respect to the subject matter of the Action; (c) the claims of the Class Representatives are
14 typical of the claims of the Class Members; (d) the Class Representatives have fairly and
15 adequately protected the interests of the Class Members; (e) a class action is superior to other
16 available methods for an efficient adjudication of this controversy; and (f) the counsel of record
17 for the Class Representatives, i.e., Class Counsel, are qualified to serve as counsel for the
18 Plaintiffs in their individual and representative capacity and for the Class.

19 12. By this Judgment, the Class Representatives shall release, relinquish, and
20 discharge, and each of the Participating Class Members shall be deemed to have, and by
21 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
22 discharged all Released Class Claims, as defined in the Settlement Agreement.

23 13. Neither the Settlement Agreement nor the Settlement contained therein, nor any
24 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
25 or the Settlement (i) is or may be deemed to be or may be used by the Class Representatives or
26 Participating Class Members as an admission of, or evidence of, the validity of any of the
27 Released Class Claims, or of any wrongdoing or liability of Defendant or any of the other
28 Released Parties; or (ii) is or may be deemed to be or may be used by any of the Class

1 Representatives or Participating Class Members as an admission of, or evidence of, any fault or
2 omission of Defendant or any of the other Released Parties in any civil, criminal, or
3 administrative proceeding in any court, administrative agency, or other tribunal. Defendant or
4 any of the other Released Parties may file the Settlement Agreement and/or the Judgment from
5 this Action in any other action that may be brought against it or them in order to support a
6 defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good
7 faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion
8 or similar defense or counterclaim.

9 14. The Gross Settlement Amount to be paid under the Settlement Agreement is
10 \$2,195,000. From this amount, Class Counsel sought a Class Counsel Fee Payment of
11 \$731,666.66, Class Counsel's litigation expenses of \$20,097.12, a Service Award to Class
12 Representatives Rafael Martinez and Germaine Tanner of \$10,000 each, an Administrator
13 Expenses of \$13,000 to Phoenix Settlement Administrators, and \$112,500 to the LWDA for
14 PAGA penalties and \$37,500 to the Aggrieved Employees for PAGA Penalties. Defendant does
15 not oppose these requests. In addition, and concurrently with paying the Settlement Amount,
16 Defendant shall separately pay all employer payroll taxes owed on the Wage Portion of the
17 Individual Class Payments, which shall be reported through the Settlement Administrator. The
18 Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the
19 payments set forth below from the Settlement Amount:

20 A) \$731,666.66 to Class Counsel for Class Counsel Fee Payment in light of
21 the benefit obtained on behalf of the Class, which shall be divided 65% to Lauby Mankin
22 Lauby LLP and 35% Gaines and Gaines, APLC;

23 B) \$20,097.12 to Class Counsel's litigation costs, which shall be allocated as
24 \$14,501.65 to Lauby Mankin Lauby LLP and \$5,595.47 to Gaines and Gaines, APLC;

25 C) \$10,000 each to Class Representatives Rafael Martinez and Germaine
26 Tanner as a Service Award;

27 D) \$13,000 to the Settlement Administrator, Phoenix Settlement
28 Administrators;

1 E) \$112,500 to the LWDA;

2 F) \$37,500 to the Aggrieved Employees on a pro rata basis;

3 G) After deducting the foregoing payments from the Gross Settlement
4 Amount, the remainder shall form the Net Settlement Amount payable to the
5 Participating Class Members as set forth in the Settlement Agreement and as calculated
6 by the Settlement Administrator.

7 15. The Settlement Administrator is directed to calculate the Participating Class
8 Member's Individual Class Payments and the Aggrieved Employees' Individual PAGA
9 Payments and issue all payments within in accordance with the Settlement Agreement and this
10 Order/Judgment.

11 16. Concurrently with mailing the settlement checks to the Participating Class
12 Members and Aggrieved Employees, the Settlement Administrator shall include a Notice of
13 Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the
14 check for the Participating Class Members, noting the following: "Please be advised that on
15 [insert date], 2023, the Superior Court of California for the County of San Bernardino entered
16 Judgment in the case entitled *Martinez v. American Tire Distributors, Inc., et al.*, pending in
17 Superior Court of the State of California, County of San Bernardino, Case No. JCCP 5239, on
18 behalf of all current and former non-exempt employees of Defendant American Tire
19 Distributors, Inc., who worked in California at any time during the Class Period of June 16, 2019
20 to February 6, 2023."

21 17. The Class Members shall have 180 days to negotiate the settlement check from
22 the date of issuance by the Settlement Administrator. In the event that a Participating Class
23 Member or Aggrieved Employee does not negotiate his/her check within this time period, the
24 check will be canceled. The value of the unclaimed funds in the Settlement Administrator's
25 account as a result of a failure to timely cash a settlement check shall be issued to the State
26 Controller's Office for the State of California in the name of the person.

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1 18. The following dates shall govern for purposes of this implementing this
2 Order/Judgment:

3 September 11, 2023	The Final Order and Judgment is entered.
4 November 13, 2023	The Effective Date occurs.
5 November 23, 2023	Defendant shall issue the payment to the Settlement Administrator.
6 Within 10 days after receipt of Payment (approximately December 4, 2023)	Settlement Administrator to issue all Individual Class Payments to the Participating Class Members, Individual PAGA Payments to the Aggrieved Employees, payment to Class Counsel for the Class Counsel Fee Payment and Litigation Expenses, the Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and pay itself the Administrator Expenses Payment.
7 180 days after payment is issued (approximately June 1, 2024)	Deadline for Participating Class Members and Aggrieved Employees to cash checks.
8 July 1, 2024	Counsel to file a declaration from the Settlement Administrator setting forth the disbursements that were actually made, including any uncashed checks and status of process of forwarding unclaimed funds to the State Controller.
9 Date: _____, 2024 10 Time: 8:30 a.m.	OSC hearing re: status of disbursements.

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1 19. This document shall constitute a Judgment for purposes of California Rule of
2 Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the
3 Class Representatives, the Class Members, and Defendant for the purposes of supervising the
4 implementation, enforcement, construction, administration, and interpretation of the Settlement
5 Agreement and this Judgment.

6 IT IS SO ORDERED.

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8 Dated: 9/11/23



JUDGE OF THE SUPERIOR COURT
MICHAELA A. SACHS