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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title
(Rule 3.550)

AMERICAN TIRE WAGE AND HOUR
CASES

*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)

Case No.: JCCP 5239
[Assigned to the Hon. Judge David Cohn, Dept.
S26, for all purposes]

[PROPOSED] ORDER:

- 1) PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT;**
- 2) CONDITIONALLY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- 3) DIRECTING DISTRIBUTION TO THE
CLASS OF THE SETTLEMENT
NOTICE AND EXPLANATION FORM;
AND**

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4) **SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

10 Having reviewed and read the Class and Representative Action Settlement Agreement
11 and Release of Claims (the “Settlement Agreement”) between Plaintiffs Rafael Martinez and
12 Germaine Tanner, Sr., and Defendant American Tire Distributors, Inc. (the “Parties”), as well as
13 the Memorandum of Points and Authorities in Support of the Unopposed Motion for Preliminary
14 Approval of Class Action Settlement, the documents submitted in support of the motion, and all
15 supporting legal authorities and documents, IT IS HEREBY ORDERED:

16 1. The Court GRANTS preliminary approval of the Settlement based upon the terms
17 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
18 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
19 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
20 review of the papers submitted by Plaintiffs, the Court finds that the Settlement is the result of
21 arms-length negotiations conducted after the Parties adequately investigated and became familiar
22 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
23 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

24 2. For settlement purposes only, the Court finds that the proposed Class is
25 ascertainable and that there is a sufficiently defined community of interest among the Class
26 Members in questions of law and fact. The Court, therefore, conditionally certifies the following
27 Class, for settlement purposes only:

28 All current and former nonexempt employees employed by
Defendant in California at any time during the Class Period

1 3. Additionally, the “Aggrieved Employees” are defined to include: “all current and
2 former nonexempt employees employed by Defendant in California at any time during the
3 PAGA Period.”

4 4. As set forth in the Settlement Agreement and as relevant to Class and Aggrieved
5 Employees definitions: (a) “Class Period” means the period of June 16, 2019, through February
6 6, 2023, and (b) “PAGA Period” means the period of December 8, 2020, through February 6,
7 2023.

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9 5. The class action settlement set forth in the Settlement Agreement between
10 Plaintiffs and Defendant is preliminarily approved as it appears to be proper, to fall within the
11 range of a fair, reasonable and adequate settlement, and to be presumptively valid, subject only
12 to any objections that may be raised at the Final Approval Hearing.

13 6. For settlement purposes only, the Court appoints Plaintiffs Rafael Martinez and
14 Germaine Tanner, Sr., as Class Representatives, and Brian Mankin, Peter Carlson, and Daniel
15 Gaines as Class Counsel.

16 7. The Court approves Phoenix Class Action Administration Solutions to act as the
17 Administrator.

18 8. The Court approves, as to form and content, the Notice and finds that the Notice
19 satisfies the requirements of California Rule of Court, rules 3.766 and 3.769, subd. (f), and fairly
20 apprises the Class Members of the terms of the final approval hearing date, the proposed
21 settlement terms and of their options, including: (1) the nature of the action, the definition of the
22 Class, the identity of Class Counsel, and the essential terms of the Settlement; (2) Plaintiffs’ and
23 Class Counsel’s applications for the Class Representative Service Payment, and Class Counsel’s
24 request for attorneys’ fees and costs; (3) a formula used to determine the Class Member’s
25 estimated Individual Class Payment and Individual PAGA Payment; (4) Settlement Class
26 Members’ rights to appear through counsel if they desire; (5) how to object to the Settlement or
27 submit an opt-out request if a Class Member wishes to do so; and (6) how to obtain additional
28 information regarding the action and the Settlement. Counsel for the Parties are authorized to

correct any typographical errors and make clarifications, to the extent the same are found or needed, so long as such corrections do not materially alter the substance of the documents.

9. The Court approves the procedure for Class Members to participate in, request exclusion from or object to, and preserve appeal rights as set forth in the Settlement Agreement and the Notice.

10. The Court finds that the deadlines and method set forth in the Settlement Agreement for the mailing of the Notice meet the requirements of due process, provide the best notice practicable under the circumstances, constitute due and sufficient notice to all persons entitled to notice, and otherwise satisfy the requirements of California law and due process.

11. The Court directs the Administrator to perform address verification measures and mail the Notice by first class mail to the Class Members not later than 10 days after it receives the “Class Data” as defined in the Settlement Agreement and to otherwise carry out the Settlement according to the terms of the Settlement Agreement and in conformity with this Order. The Parties are also ordered to carry out the Settlement according to the terms of the Settlement Agreement.

12. All Class Members shall be deemed to participate in the Settlement, although any Class Member who wishes to comment on or object to the Settlement or who elects not to participate in the Settlement has until forty-five (45) days after the mailing of the Class Notice to submit an objection or Request to be Excluded, pursuant to the procedures set forth in the Notice.

13. The Court approves the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Administrator’s account as a result of a failure to timely cash a settlement check shall be issued to the State Controller’s Office in the name of the Class Member, as set forth in the Settlement Agreement.

14. The following dates shall govern for purposes of this settlement:

April 25, 2023	Preliminary Approval (PA) hearing
May 26, 2023 <i>31 days after PA</i>	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
July 10, 2023 <i>45 days after mailing Notice</i>	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.

16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD - Approx. August 14, 2023 (<i>110 days after PA</i>)	Final Approval Hearing.

15. A final approval hearing shall be held in this Court on _____, 2023 at _____ a.m. to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of Attorneys' Fees and Costs Award to Class Counsel; and (3) the amount of the Service Payments to the Class Representatives. The Court may continue or adjourn the final approval hearing without further notice to the Class.

16. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the Settlement, attorneys' fees, litigation costs, Class Representatives' Service Payments, Administration Costs, and payment to LWDA for PAGA penalties prior to the Final Approval hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

17. Neither this Order, the Settlement Agreement, nor any document referred to therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement may be construed as, or may be used as an admission by or against Defendant or any of the other Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant or any of the other Released Parties and shall not be offered in evidence in any action or proceeding against Defendant or any of the Released Parties in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Order,

1 the Settlement Agreement, or any related agreement or release.

2 18. The Court may, for good cause shown, extend any of the deadlines set forth in
3 this Order.

4 19. In the event that the Settlement Agreement does not receive final approval or the
5 Effective Date of the Settlement does not occur, this Order shall be rendered null and void and
6 shall be vacated.

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8 20. Pending the Final Approval hearing, all proceedings in this action, other than
9 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
10 Order, are stayed.

11 21. Counsel for the parties are hereby authorized to utilize all reasonable procedures
12 in connection with the administration of the Settlement which are not materially inconsistent
13 with either this Order or the terms of the Settlement.

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15 Date: _____

16 Hon. David Cohn
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