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Attorneys for Plaintiff,
Danielle Denise Smalling,
individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

DANIELLE DENISE SMALLING, individually and
on behalf of all others similarly situated,

Plaintiff(s),

v.

BIG OIL & TIRE CO.; and DOES 1 through 100,

Defendant(s).

Case No.CV2200387

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL**

Hearing Date: July 29, 2024

Hearing Time: 10:30 a.m.

Department: 4

WHEREAS, this Action is pending before this Court as a putative class action lawsuit brought by Danielle Denise Smalling, the Named Plaintiff (“Plaintiff” or “Named Plaintiff”) against Defendant Big Oil & Tire (“Defendant”); and

WHEREAS, Class Counsel applied to this Court for an order preliminarily approving the settlement of the Action in accordance with the Class Action and PAGA Settlement Agreement (the “Settlement Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement and final resolution of the Action upon the terms and conditions set forth therein; and the Court having read and considered the Settlement Agreement and the exhibits annexed thereto;

1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. This Order incorporates by reference the definitions in the Settlement Agreement,
3 and all terms defined therein shall have the same meaning in this Order as set forth in the
4 Settlement Agreement. Per the Parties' Settlement Agreement, the Court hereby conditionally
5 certifies the following Settlement Class: all persons who worked for Big Oil & Tire Co. as an
6 hourly paid, non-exempt employee during the Class Period." The Class Period is March 18, 2018,
7 to November 9, 2023.

8 2. Upon Final Approval, and subject to Defendant's payment of all sums required
9 herein, the claims released by the Class Members will include the Claims set forth in the Class
10 Action Lawsuit for periods of time during employment with Defendant in California as non-exempt
11 hourly employees during the Class Period, including, but not limited to:

12 a. For Participating Class Members: from (i) all claims that were alleged, or reasonably
13 could have been alleged under the Labor Code and IWC Wage Orders, based on the
14 Class Period facts stated in the Operative Complaint including e.g., any and all
15 claims involving (a) Meal Period Violations, (b) Rest Period Violations, (c) Failure
16 to Pay Overtime Wages, (d) Failure to Pay Minimum Wage, (e) Waiting Time
17 Penalties, (f) Wage Statement Penalties, (g) Violations of the Unfair Competition
18 Law, (h) work expense reimbursement violations, and (i) failure to provide suitable
19 seating. Except as set forth in Section 5.3 of the Agreement [section b. below],
20 Participating Class Members do not release any other claims, including claims for
21 vested benefits, wrongful termination, violation of the Fair Employment and
22 Housing Act, unemployment insurance, disability, social security, workers'
23 compensation or claims based on facts occurring outside the Class Period.

24 b. For Aggrieved Employees: from all claims for PAGA penalties that were alleged,
25 or reasonably could have been alleged, based on the PAGA Period facts stated in
26 the Operative Complaint and the PAGA Notice, including, e.g., any and all
27 claims for PAGA Penalties for (a) Meal Period Violations, (b) Rest Period
28 Violations, (c) Failure to Pay Overtime Wages, (d) Failure to Pay Minimum

1 Wages, (e) Failure to Pay Wages Promptly During Employment and/or Upon
2 Termination, (f) Failure to Provide Accurate Wage Statements, (g) Failure to
3 Reimburse Work Related Expenses, and (h) Failure to Provide Suitable Seating.

4 Released Parties include Defendant and its' former and present representatives, agents,
5 attorneys, heirs, administrators, successors and assigns.

6 In addition to the releases listed above, Named Plaintiff personally, shall be deemed to have,
7 and operation of the Judgement in this action shall have, agreed to be bound by the following
8 release:

9 Plaintiff and her respective former and present spouses, representatives, agents, attorneys,
10 heirs, administrators, successors and assigns generally, release and forever discharge Released
11 Parties from any and all past, present, and future claims, demands, obligations, actions, causes of
12 action, rights, damages, losses of services, wages, costs, expenses, and compensation whatsoever,
13 occurring from the beginning of time to Plaintiff's execution of this agreement, including, but not
14 limited to:

15 (a) all claims that were, or reasonably could have been, alleged, based on the facts
16 contained, in the Operative Complaint and

17 (b) all PAGA claims that were, or reasonably could have been, alleged based on facts
18 contained in the Operative Complaint, and Plaintiff's PAGA Notice, as well as ("Plaintiff's
19 Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or
20 to any claims for vested benefits, unemployment benefits, disability benefits, social security
21 benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the
22 Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in
23 addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless,
24 that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different
25 or additional facts or Plaintiff's discovery of them.

26
27 1. Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's
28 Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of

1 section 1542 of the Civil Code, which reads:

2 **A general release does not extend to claims that the creditor or releasing party**
3 **does not know or suspect to exist in his or her favor at the time of executing the**
4 **release, and that if known by him or her would have materially affected his or**
5 **her settlement with the debtor or Released Party**

6 3. Named Plaintiff is hereby appointed and designated, for all purposes, as the
7 representative of the Class and Representative Action, and the following attorneys are hereby
8 appointed and designated as counsel for the Named Plaintiff, the Class Representatives and the
9 Class: Emmanuel M. Starr, and Theodore Tang of Frontier Law Center (“Class Counsel”). Class
10 Counsel are authorized to act on behalf of Participating Class Members with respect to all acts or
11 consents required by, or which may be given pursuant to, the Settlement, and such other acts
12 reasonably necessary to consummate the Settlement. Any Objecting Class Member may enter an
13 appearance through counsel of such Class Member’s own choosing and at such Class Member’s
14 own expense.

15 4. The Court finds on a preliminary basis that the Settlement appears to be fair,
16 reasonable and adequate, and one that would merit, ultimately, final approval by this Court. The
17 Court has reviewed the Settlement and recognizes the value thereof to the Class Members. The
18 Court finds, on a preliminary basis, that the Settlement is fair, adequate and reasonable as to all
19 Class Members when balanced against the potential outcomes of further litigation relating to
20 liability and damages issues. The Court further finds that the Settlement has been reached as the
21 result of serious and non-collusive, arms-length negotiations by Defendant and Plaintiff (the
22 “Settling Parties”).

23 5. A hearing (the “Settlement Hearing”) shall be held before this Court, located at 421 I
24 Street, Eureka, CA 95501, on _____ at _____, in Department __, to determine
25 all necessary matters concerning the Settlement, including: whether the proposed settlement of the
26 Action should be finally approved by the Court; whether a Judgment, as provided in the Settlement
27 Agreement, should be entered herein; whether the plan of allocation contained in the Settlement
28 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to

1 finally approve Class Counsel's Fees Award and Cost Award, the Class Representative's
2 Enhancement award, payment to the Labor and Workforce Development Agency and the Settlement
3 Administration Costs.

4 6. The Court hereby approves, as to form and content, the Notice, attached as Exhibit 1
5 to the Settlement Agreement. The Court finds that distribution of the Notice, substantially in the
6 manner and form set forth in the Settlement Agreement and this Order, meets the requirements of
7 due process, is the best notice practicable under the circumstances, and will constitute due and
8 sufficient notice to all persons entitled thereto.

9 7. The Court hereby appoints ILYM as Settlement Administrator and hereby directs the
10 Settlement Administrator to simultaneously mail or cause to be mailed to Class Members the Notice
11 (Exhibit 1) by first class mail at their last known address within fourteen (14) days of receiving a
12 Class Information from Defendants.

13 8. Any Class Member (as defined by the Settlement Agreement) may choose to opt-out
14 of the Settlement or object to the Settlement as provided in the Notice by following the instructions
15 for requesting exclusion from the Settlement Class or objecting to the settlement. Class Members
16 will have sixty (60) days from the date of mailing (plus fourteen (14) days for any class member
17 whose notice is remailed) of the Notice in which to postmark objections or a notice of opting out.
18 Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses
19 against the National Change of Address database and shall update any addresses before mailing. All
20 Class Members who do not timely and properly notify the Settlement Administrator of their desire
21 to opt-out of the Settlement, shall become bound by all determinations of the Court, the Settlement
22 Agreement and Judgment.

23 9. Any Class Member who did not opt-out may appear at the Settlement Hearing and
24 may object or express his/her views regarding the Settlement and may present evidence and file
25 briefs or other papers that may be proper and relevant to the issues to be heard and determined by
26 the Court as provided in the Notice. However, if a Class Member requests exclusion, the Class
27 Member shall not be heard or entitled to object, and no papers or briefs submitted by any such
28 person shall be received or considered by the Court. To object to the settlement a Class Member

1 must file with the Court and serve on the Settlement Administrator and Counsel for the Settling
2 Parties, not later than sixty (60) calendar days after the date that the Settlement Administrator first
3 mails the Class Notice (plus fourteen (14) days for those whose notice was remailed), a written
4 statement objecting to the Settlement and setting forth the grounds for the objection. The written
5 statement of objection must indicate whether the Class Member intends to appear and object to the
6 Settlement at the Final Approval Hearing. The Court retains final authority with respect to the
7 consideration and admissibility of any Class Member objections. Counsel for the Parties shall file
8 any response to the objections submitted by objecting Class Members at least five (5) court days
9 before the date of the Final Fairness and Approval Hearing.

10 10. As of the date this Order is signed, all dates and deadlines associated with the Action
11 shall be stayed, other than those pertaining to the administration of the Settlement of the Action.

12 11. In the event the Settlement does not become effective in accordance with the terms
13 of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled or
14 fails to become effective for any reason, this Order shall be rendered null and void and shall be
15 vacated and the Parties shall revert to their respective positions as of before entering into the
16 Settlement Agreement.

17 The Court reserves the right to adjourn or continue the date of the Settlement Hearing and
18 all dates provided for in the Settlement Agreement without further notice to Class Members and
19 retains jurisdiction to consider all further applications arising out of or connected with the proposed
20 Settlement.

21
22
23 Dated: _____

Hon. Timothy A. Canning