

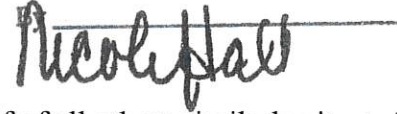
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FILED
ALAMEDA COUNTY

SEP 15 2023

CLERK OF THE SUPERIOR COURT



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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ASTRID OROZCO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DELPHON INDUSTRIES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: 22CV006597

[Assigned to Hon. Evelio Grillo, Dept. 21, for
all purposes]

~~PROPOSED~~ ORDER AND JUDGMENT
OF FINAL APPROVAL

Complaint filed: February 4, 2022

The Motion for Final Approval of the Settlement (the "Final Approval Motion") as set forth in the Amended Class Action and PAGA Settlement Agreement and Release of Claims¹ (the "Settlement Agreement") between Plaintiff Astrid Orozco ("Plaintiff" or "Class Representative") and Defendant Delphon Industries, LLC, (collectively, "the Parties") came for hearing in Department 21 of the above-entitled court. The Final Approval Motion was unopposed by Defendant. Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having conducted an inquiry pursuant to California Rules of Court, Rule 3.769(g), the Court finds that

¹ See Exhibit 1 to the Declaration of Brian Mankin filed in support of Preliminary Approval.

1 the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement
2 is approved. Due and adequate notice having been given to the Class, and the Court having
3 considered the Settlement Agreement, all papers filed and proceedings had herein and all oral
4 and written comments received regarding the proposed settlement, and having reviewed the
5 record in this Litigation, and good cause appearing,

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

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

9 2. The Court has jurisdiction over the subject matter over this Action, the Class
10 Representative, the Class Members, the Aggrieved Employees (aka “Aggrieved Employees”),
11 the Labor and Workforce Development Agency (“LWDA”), and Defendant.

12 3. For sole purposes of effectuating this Order and Judgment, this Court has certified
13 the following the class:

14 a. “Class Members” is defined as all current and former non-exempt employees
15 employed by Delphon Industries, LLC in California at any time during the
16 Class Period. The Class Period is February 4, 2018, through February 13,
17 2023.

18 b. The Court deems this definition sufficient for purposes of California Rules of
19 Court, rule 3.765(a).

20 c. “Participating Class Members” includes “any and all Settlement Class
21 Members who are deemed to participate, who will receive an Individual
22 Settlement Payment, and who do not opt-out by submitting a timely, valid
23 Request for Exclusion.”

24 4. With respect to the Class Members and for the sole purposes of approving this
25 Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable
26 and so numerous that joinder of all members is impracticable; (b) there are questions of law or
27 fact common to the Class Members, and there is a well-defined community of interest among the
28 Class Members with respect to the subject matter of the Action; (c) the claims of the Class

1 Representative are typical of the claims of the Class Members; (d) the Class Representative has
2 fairly and adequately protected the interests of the Class Members; (e) a class action is superior
3 to other available methods for an efficient adjudication of this controversy; and (f) the counsel of
4 record for the Class Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the
5 Plaintiff in their individual and representative capacity and for the Class.

6 5. The Court finds that the distribution of the Class Notice, as provided for in the
7 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
8 under the circumstances to all Class Members and fully met the requirements of California law
9 and due process under the California and United States Constitution. Based on evidence and
10 other material submitted, the actual notice to the class was adequate. The Court further finds that
11 Plaintiff properly gave notice of this Settlement to the LWDA.

12 6. The Court finds that the instant Action presented a good faith dispute of the
13 claims alleged, and the Court finds in favor of settlement approval. Specifically, as defined in
14 the Settlement Agreement, the Released Class Claims on behalf of the Participating Class
15 Members included the claims stated in the Complaint or those claims which could have been
16 asserted in the Complaint based upon the facts in the Complaint, including: (a) failure to pay
17 wages or minimum wages (including for off the clock claims and rounding claims), (b) failure to
18 pay overtime wages (including for off the clock, regular rate, invalid alternative work weeks, or
19 rounding claims), (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
20 to timely pay wages each period and upon separation of employment, (f) failure to provide
21 accurate itemized wage statements, (g) unfair and unlawful competition, and (i) all other claims
22 for statutory penalties based on the above.

23 7. Additionally, as defined in the Settlement Agreement, the PAGA Released Claims
24 means the PAGA claims that Plaintiff alleged against the Released Parties, on behalf of herself
25 and the State of California, based on the facts stated in the Complaint and in the relevant LWDA
26 notice letter or that could have been asserted based on those facts, including all PAGA claims
27 seeking civil penalties premised upon: (a) failure to pay wages or minimum wages (including for
28 off the clocking or rounding), (b) failure to pay overtime wages (including for off the clock,

regular rate, invalid alternative work weeks, or rounding), (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA Notice and the Complaint.

8. There are no Requests for Exclusion to the Settlement. Thus, all 162 Class Members are deemed to be Participating Class Members are entitled to payment pursuant to the Settlement and this Judgment. Furthermore, all Aggrieved Employees are entitled to payment pursuant to this Settlement and Judgment.

9. There are no objections to the Settlement.

10. The Court approves the Settlement, as set forth in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate as to the Parties. The Court has considered all relevant factors for determining the fairness of the Settlement and has concluded that all such factors weigh in favor of granting final approval. In particular, the Court finds that the Settlement was reached following meaningful discovery and investigation conducted by Class Counsel; that the Settlement is the result of serious, informed, adversarial, and arm's-length negotiations between the Parties; and that the terms of the Settlement are in all respects fair, adequate, and reasonable. In so finding, the Court has considered all evidence presented, including evidence regarding the strength of Plaintiff's case; the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the amount offered in the Settlement; the extent of investigation and discovery completed; and the experience and views of counsel. The Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement and this Order and Judgment.

11. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement and this Order and Judgment.

12. By this Judgment, Class Representative is also deemed to have fully, finally, and forever released any and all claims, known or unknown, against the Released Parties, as set forth in the Settlement Agreement.

1 13. Neither the Settlement Agreement nor the Settlement contained therein, nor any
2 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
3 or the Settlement (i) is or may be deemed to be or may be used by Plaintiff or Participating Class
4 Members as an admission of, or evidence of, the validity of any of the Released Class Claims, or
5 of any wrongdoing, liability, fault, omission, waiver of defenses, or concession of Defendant or
6 any of the other Released Parties; or (ii) is or may be deemed to be or may be used by Plaintiff or
7 Aggrieved Employees as an admission of, or evidence of, the validity of any of the PAGA
8 Released Claims, or of any wrongdoing, liability, fault, omission, waiver of defenses, or
9 concession of Defendant or any of the other Released Parties; or (iii) is or may be deemed to be
10 or may be used by Plaintiff, Participating Class Members, or Aggrieved Employees as an
11 admission of, or evidence of, any wrongdoing, liability, fault, omission, waiver of defenses, or
12 concession of Defendant or any of the other Released Parties in any civil, criminal, or
13 administrative proceeding in any court, administrative agency, or other tribunal. Defendant or
14 any of the other Released Parties may file the Settlement Agreement and/or the Judgment from
15 this Action in any other action that may be brought against it or them in order to support a
16 defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good
17 faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion
18 or similar defense or counterclaim.

19 14. The Gross Settlement Amount to be paid under the Settlement Agreement is
20 \$775,000. From this amount, Class Counsel ^{will be paid} sought an award of attorney's fees of ~~\$258,333.33~~ ^{\$232,500},
21 litigation expenses of \$13,832.66, a Service Payment to the Class Representative Astrid Orozco
22 of \$7,500, Settlement Administrator Costs of \$8,000 to Phoenix Settlement Administrators,
23 \$56,250 to the LWDA for PAGA penalties and \$18,750 to the Aggrieved Employees. Defendant
24 does not oppose these requests. The Court finds that the Settlement Amount is fair, reasonable
25 and adequate, and approves the following payments from the Settlement Amount:

26 A) \$258,333.33 to Class Counsel for attorneys' fees of which ninety percent
27 (90%) shall be disbursed within 10 days of the Settlement Administrator's receipt of the Gross
28 Settlement Amount, and ten percent (10%) shall be kept in the Settlement Administrator's

account until the completion of the distribution process and the Court's approval of a final accounting;

B) \$13,832.66 to Class Counsel for costs/expenses;

C) \$7,500 to Class Representative Astrid Orozco as a Service Payment;

D) \$8,000 to the Administrator, Phoenix Settlement Administrators;

E) \$56,250 to the LWDA;

F) \$18,750 to the Aggrieved Employees;

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

15. Upon entry of this Order and Judgment, Defendant is directed to fund the Settlement Amount in accordance with the Settlement Agreement and the timeline set forth below. The Settlement Administrator is directed to calculate the Participating Class Member's Individual Settlement Payments from the Net Settlement Amount, as well as the Aggrieved Employees' individual PAGA payments, and issue all payments in accordance with the Settlement Agreement and the timeline set forth below:

61 calendar days following the date this Order and Judgment is entered	The Effective Date occurs.
15 calendar days after the Effective Date	Defendant is directed to deposit the Gross Settlement Amount into the Qualified Settlement Fund, plus its share of payroll taxes as calculated by the Settlement Administrator.
10 calendar days after Defendant's deposit of the Settlement Amount into the Qualified Settlement Fund	Settlement Administrator to issue all payments to Participating Class Members, Aggrieved Employees, Class Counsel (except for 10% of the attorneys fees that it will hold in trust pending the Court's approval of the final accounting), LWDA and itself.

180 calendar days after the Settlement Administrator issues Individual Settlement Payments	Deadline for Participating Class Members and Aggrieved Employees to cash checks.
10 calendar days after the check cashing deadline	Settlement Administrator shall issue the uncashed check fund to the cy pres, Public Justice
15 calendar days after the check cashing deadline	Class Counsel to file a declaration from the Settlement Administrator setting forth the disbursements that were actually made, including any uncashed funds to the cy pres, Public Justice.
Date: <u>March 22</u> , 2024 Time: <u>9:00</u> a.m. <u>1:30</u>	Final Accounting Hearing
5 calendar days after Court's approval of the final accounting	Settlement Administrator to issue the remaining 10% of Attorneys Fees to Class Counsel

16. The envelope transmitting the settlement checks shall bear the notation "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." Concurrently with mailing the settlement checks to the Participating Class Members and Aggrieved Employees, the Settlement Administrator shall include a Notice of Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the check for the Participating Class Members, noting the following: "Please be advised that on [INSERT DATE] the Superior Court of California for the County of Alameda entered Judgment in the case entitled *Astrid Orozco v. Delphon Industries, LLC*, Case No. 22CV006597, on behalf of the Participating Class Members and the Aggrieved Employees, which includes all current and former non-exempt employees of Delphon Industries, LLC who worked in California at any time during the Class Period or the PAGA Period, respectively. The Class Period is February 4, 2018, through February 13, 2023. The PAGA Period is February 4, 2021, through February 13, 2023."

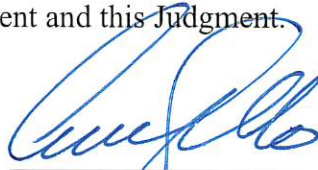
17. Participating Class Members and Aggrieved Employees shall have 180 calendar days to negotiate the settlement check from the date of issuance by the Settlement Administrator.

1 If a Participating Class Member and/or Aggrieved Employees does not negotiate his/her check
2 within this time period, the check will be canceled. The value of the unclaimed funds in the
3 Settlement Administrator's account as a result of a failure to timely cash a settlement check shall
4 be issued to Public Justice (publicjustice.net), a non-profit organization.

5 18. This document shall constitute a Judgment for purposes of California Rule of
6 Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the
7 Class Representative, the Class Members, the Aggrieved Employees, the LWDA, and Defendant
8 for the purposes of supervising the implementation, enforcement, construction, administration,
9 and interpretation of the Settlement Agreement and this Judgment.

10 IT IS SO ORDERED.

11 Dated: September 15, 2023



Hon. Evelio Grillo

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 09/21/2023
PLAINTIFF/PETITIONER: Astrid Orozco	Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy
DEFENDANT/RESPONDENT: Delphon Industries, LLC	N. Hall
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 22CV006597

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order and Judgment of Final Approval entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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tracie@lmlfirm.com

Gregory G Iskander
LITTLER MEDELSON, P.C.
giskander@littler.com

Dated: 09/21/2023

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk