

FILED / ENDORSED

FEB 17 2023

By T. Shaddix, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERIC SHADINGER, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

WESCO DISTRIBUTION, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 34-2021-00298583-CU-OE-GDS

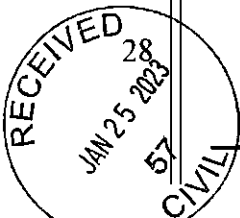
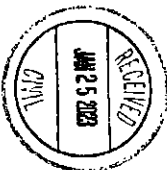
Assigned for All Purposes to:
Honorable Jill H. Talley
Department 27

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: February 17, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 27

Complaint Filed: April 12, 2021
FAC Filed: November 7, 2022
Trial Date: None Set



1 The Court, having read the papers filed regarding Plaintiff Eric Shadinger's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Joint Stipulation of Class Action Settlement and Release
4 ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS**:

5 Plaintiff and Defendant Wesco Distribution, Inc. ("Defendant") entered the Settlement
6 Agreement on or about October 11, 2022 to settle this lawsuit.

7 The Court entered an order dated November 17, 2022 preliminarily approving the
8 settlement of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
9 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
10 Members, providing Class Members with an opportunity to object to the Settlement or exclude
11 themselves from the Class, and scheduling a Final Approval Hearing on February 17, 2023.

12 The Court held a Final Approval Hearing on February 17, 2023 to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
15 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
16 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
17 in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class been
19 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the
20 claims of all Class Members. The Court also has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former non-exempt employees
25 who worked for Defendant within the State of California at any time during the period from
26 April 12, 2017, to July 8, 2022 ("Class," "Class Members," and "Class Period"). There are four
27 hundred four (404) Class Members who did not submit timely and valid requests for exclusion
28 from the Class Action Settlement ("Claimants").

1 4. Adequacy of Representation. Class Counsel fully and adequately represented the
2 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
3 Code of Civil Procedure section 382.

4 5. Class Notice. The Court finds the Notice of Class Action Settlement (“Class
5 Notice”) and its distribution to Class Members were implemented pursuant to the Settlement and
6 this Court’s Preliminary Approval Order. The Court also finds the Class Notice:

7 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
8 pendency of this lawsuit; (ii) material terms and provisions of the Settlement Agreement and
9 their rights; (iii) their right to object to any aspect of the Settlement Agreement; (iv) their right to
10 exclude themselves from the Settlement Agreement; (v) their right to receive Individual
11 Settlement Payments; (vi) their right to appear at the Final Approval Hearing; and (vii) binding
12 effect of the orders and judgment in this lawsuit on all Claimants;

13 b. constitutes notice that fully satisfied the requirements of Code of Civil
14 Procedure section 382, California Rule of Court 3.769, and due process;

15 c. constitutes the best practicable notice to Class Members under the
16 circumstances of this lawsuit; and

17 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

18 6. Final Settlement Approval. The terms and provisions of the Settlement
19 Agreement have been entered in good faith and are the product of arm’s-length negotiations by
20 experienced counsel who have done a meaningful investigation of the claims. The Settlement
21 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
22 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
23 Settlement Agreement according to its terms and provisions.

24 7. Binding Effect. The terms and provisions of the Agreement and this Order and
25 Judgment are binding on Plaintiff, Claimants, Private Attorneys General Act of 2004 (“PAGA”)
26 Aggrieved Employees, and their spouses, heirs, registered domestic partners, executors,
27 administrators, successors, and assigns. In addition, those terms shall have res judicata and other
28 preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by

1 or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings
2 involve matters that were or could have been raised in this lawsuit and are encompassed by the
3 Released Claims. The Agreement will have no binding effect upon, and provide no res judicata
4 preclusion to, those Class Members who have submitted timely requests for exclusion.

5 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
6 any action to enforce the terms and provisions of the Settlement Agreement.

7 9. Release of Claims by Class Members. Upon the Effective Date and conditioned
8 on the full funding of the settlement, Plaintiff and all Class Members who have not submitted
9 valid and timely Requests for Exclusion, will be deemed to have fully, finally, and forever
10 released, settled, compromised, relinquished, and discharged with respect to all the Released
11 Parties any and all Released Claims for any period during the Released Claims Period.

12 a. General Release by Class Representative. In addition to the release given by each
13 Class Member, Plaintiff also completely and generally releases any and all claims
14 against the Released Parties. This general release by Plaintiff also includes a
15 waiver of rights under Civil Code Section 1542.

16 b. Released Parties. The Released Parties include Defendant and each of its past,
17 present and future subsidiaries, dbas, parents, divisions, related entities, corporate
18 affiliates, joint venturers, as well as each of their respective owners, co-
19 employers, joint employers, agents, officers, directors, stockholders, shareholders,
20 members, principles, subsidiaries, affiliates, partners, predecessors and successors
21 in interest, insurers, reinsurers, employees, attorneys, assigns, heirs, spouses,
22 associates, representatives, administrators, fiduciaries, trustees, accountants,
23 auditors, and company-sponsored employee benefit plans of any nature, and those
24 plans' respective current or former trustees and administrators, agents, employees,
25 and fiduciaries, and any other persons acting by, through, under, or in concert
26 with any of them.

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1 10. Class Representative Enhancement Payment. The Court finds the Class
2 Representative Enhancement Payment of \$10,000, to be paid by Defendant to Plaintiff out of the
3 Maximum Settlement Amount, to be reasonable and appropriate. The Class Representative
4 Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the
5 Settlement Agreement.

6 a. The rationale for making enhancement payments is class representatives should
7 be compensated for the expense and risk they incurred in conferring a benefit on
8 the Class. Criteria courts consider include: (1) risk to the class representatives in
9 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
10 effort spent by the class representatives; (4) duration of the litigation; and (5)
11 personal benefit (or lack thereof) enjoyed by class representatives.

12 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
13 risks inherent in the services as the class representative, duration of the case and
14 time involved, and benefits created for the Class, the Court approves the payment
15 of the Class Representative Enhancement Payment of \$10,000 to Plaintiff.

16 11. Attorneys' Fees and Costs. The Court finds the attorneys' fees of \$486,500, to be
17 paid out of the Maximum Settlement Amount by Defendant to Class Counsel, to be reasonable
18 and appropriate. In addition, the Court finds the attorneys' costs as reimbursement for actual
19 litigation costs incurred of \$15,180.84, to be paid by Defendant to Class Counsel out of the
20 Maximum Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be
21 paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall
22 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
23 incurred by Class Counsel or any other counsel representing Plaintiff or Class Members.
24 Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or
25 disbursements incurred by Plaintiff or Class Members in connection with or related in any
26 manner to this lawsuit, Agreement, claims administration, and/or Released Claims.

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1 a. The Court has an independent right and responsibility to review the attorneys'
2 fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
3 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The
4 attorneys' fees of \$486,500 is thirty-five percent (35%) of the common fund
5 created for the benefit of the Class and is supported by use of the percentage-fee
6 method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480,
7 504.) Considering the exceptional results achieved, financial risk undertaken,
8 novel and difficult nature of this litigation, skills required, percentage fees award
9 in previous and other cases, and contingent fees charged in the marketplace, the
10 Court finds the attorneys' fees is consistent with the marketplace, is reasonable,
11 and is approved.

12 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
13 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
14 seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class
15 Counsel expended \$15,180.84 in litigation costs, and such costs were reasonable.
16 Thus, the Court approves the payment of the attorneys' costs of \$15,180.84 from
17 the common fund for the reimbursement of Class Counsel's litigation costs.

18 12. Claims Administration Costs. The Court finds Claims Administration Costs of
19 \$9,750, to be paid by Defendant to the Claims Administrator out of the Maximum Settlement
20 Amount, to be reasonable and appropriate. The Claims Administration Costs are to be paid
21 pursuant to terms and provisions set forth in the Settlement Agreement.

22 a. The Court reviewed the declaration of Taylor Mitzner from Phoenix Class Action
23 Settlement Administration Solutions, the Court-approved Claims Administrator.
24 The Court finds notice was provided to the Class pursuant to the Preliminary
25 Approval Order, constitutes the best practicable notice to the Class, and satisfied
26 due process. Therefore, the Court approves the payment of the Claims
27 Administration Costs of \$9,750 for the Claims Administrator's services in
28 administering the Settlement.

1 13. PAGA Payment. The Court finds the PAGA Payment of \$100,000, seventy-five
2 percent (75%) of which (\$75,000) will be paid to the California Labor and Workforce
3 Development Agency out of the Maximum Settlement Amount and twenty-five percent (25%) of
4 which (\$25,000) will be distributed, pro rata, based on weeks worked to all PAGA Aggrieved
5 Employees to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the
6 terms and provisions set forth in the Settlement Agreement.

7 14. Funding the Settlement. Defendant will deposit an amount equal to the sum of
8 the Court approved Attorneys' Fees and Costs, Class Representative Enhancement Payment,
9 Claims Administration Costs, PAGA Payment, the total of the Individual Settlement Payments,
10 and the employer-side payroll taxes computed by the Claims Administrator into a Qualified
11 Settlement Fund ("QSF") account to be established by the Claims Administrator within seven (7)
12 business days of the Effective Date in accordance with the instructions provided by the Claims
13 Administrator. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail
14 to the Claimant's last known mailing address within fourteen (14) calendar days after Defendant
15 deposits the Maximum Settlement Amount into a QSF.

16 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
17 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
18 Settlement was the product of arm's-length negotiations following extensive litigation,
19 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
20 Jeffrey A. Ross, Esq., an experienced and well-respected mediator.

21 a. The fairness of the Settlement is demonstrated by there being no objections to and
22 no requests for exclusion from the Settlement.

23 b. The fairness of the Settlement Agreement is further illustrated by the gross
24 *average* Individual Settlement Payment being approximately \$1,902.40, and the
25 gross *highest* Individual Settlement Payment being about \$4,523.03.

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1 16. Uncashed Checks. Any checks issued by the Claims Administrator to Claimants
2 will be negotiable for at least one hundred eighty (180) calendar days. Uncashed settlement
3 checks will escheat to the State of California's Controller, to be held in the name of each expired
4 check payee, pursuant to applicable unclaimed property laws.

5 17. Modification of Settlement. The Claimants are hereby authorized, upon approval
6 of the Court, to agree to and adopt amendments to or modifications of the Settlement by a written
7 instrument signed by the named Parties and counsel for all Parties or their successors-in-interest.
8 Such amendments or modifications shall be consistent with this Order and Judgment and cannot
9 limit the rights of Claimants under the Settlement.

10 18. Final Accounting and Compliance. The Court sets a nonappearance case review
11 for November 17, 2023 in Department 27. Within five (5) court days before this hearing,
12 Plaintiff shall file a compliance status report. Pursuant to Code of Civil Procedure section 384,
13 the compliance status report shall specify the total amount paid to Claimants and the residual of
14 the unclaimed settlement funds that will be paid to the entity identified as the recipient of such
15 funds in the Settlement Agreement.

16 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
17 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
18 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
19 and for any other necessary purpose, including, without limitation:

- 20 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
21 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
22 arise out of the Settlement or this Order and Judgment;
- 23 b. entering such additional orders as may be necessary or appropriate to protect or
24 effectuate this Order and Judgment approving the Settlement, and permanently
25 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
26 fair and orderly administration of the Settlement; and
- 27 c. entering any other necessary or appropriate orders to protect and effectuate this
28 Court's retention of continuing jurisdiction.

1 The Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs,
2 and Class Representative Enhancement Payment is GRANTED. The Claims Administrator is
3 directed to carry out the terms of the Settlement Agreement forthwith.

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
5 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
6 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
7 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
8 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
9 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
10 THE JUDGMENT THEREON.

11 IT IS SO ORDERED.

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13 DATED: 2/17/23



14 HONORABLE JILL H. TALLEY
15 SUPERIOR COURT JUDGE
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On February 22, 2023, I served the foregoing document described as

PROOF OF SERVICE