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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

ALONSO HERNANDEZ, individually and on
behalf of other persons similarly situated,

Plaintiff,

vs.

WILD DEVIL LLC; JOSEPH MANZELLA
and **DOES 1-50**,

Defendants.

Case No.: 30-2016-00839840-CU-OE-CJC
[Hon. Peter Wilson, Department CX102]

CLASS ACTION

**SECOND AMENDMENT TO
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

Complaint Filed: March 9, 2016
Trial Date: None Set

SECOND AMENDMENT TO STIPULATION
OF CLASS ACTION AND PAGA SETTLEMENT

Pursuant to direction of the Court in its preliminary review of the Parties' Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"), the Parties amend the Settlement Agreement (hereinafter referred to as the "Second Amendment") as stated below. This Amendment shall incorporate the defined terms contained within the Agreement, except where contradictory as expressly stated herein.

WHEREAS, Paragraph 74 of the Settlement Agreement provides that it may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest;

WHEREAS, the Court expressed concerns that Paragraph 59 of the Settlement Agreement previously did not provide adequate methodology to ensure payments would be received by class members who relocated during the proposed 19-month payment period;

WHEREAS, the Court expressed concerns that the Settlement Agreement was ambiguous as to the timing and number of distribution mailings of settlement funds;

WHEREAS, the Court indicated it is not inclined to approve the Settlement Agreement if the costs allocated to the Settlement Administrator are uncapped;

The parties do so stipulate to amend the Agreement as follows (new text in underline; deleted text in ~~strikethrough~~):

1. Paragraph 59 of the Settlement Agreement shall read as follows:

Individual Settlement Payments. Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by First Class U.S. Mail to Settlement Class Members' ~~last known~~ best available mailing address within fourteen (14) calendar days after Defendants provide ~~funds~~ full Gross Settlement Fund and all employer-side payroll taxes, as required, to the Settlement

Administrator for disbursement under this Agreement. Within seven (7) days prior to mailing checks to Settlement Class Members, the Settlement Administrator shall perform a national change of address (“NCOA”) search to determine each Class Member’s best available mailing address. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. After that time, any such unclaimed checks will be distributed to *Cy Pres* Recipients as described in Paragraph **Error! Reference source not found.** below. In such event, those Class Members will nevertheless remain bound by the Settlement. Individuals will be entitled to payment from the Net Settlement Amount based on their status as members of the various Sub Classes described herein.

2. Paragraph 60 of the Settlement Agreement shall read as follows:

Class Counsel Award. Class Counsel will submit an application for attorneys’ fees not to exceed one-third of the Gross Settlement Fund (or fifty thousand dollars (\$50,000.00) as anticipated prior to any potential increase as described in Paragraph **Error! Reference source not found.**), plus actual costs not to exceed Eighteen Thousand Dollars (\$18,000). Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. ~~The Class Counsel Award shall be paid to Class Counsel from the Gross Settlement Fund no later than fourteen (14) calendar days after Defendants provide funds to the Settlement Administrator for disbursement under this Agreement.~~ Actual costs awarded by the Court shall be reimbursed to Class Counsel upon receipt of funds from Defendants. Attorneys’ fees awarded by the Court shall be disbursed to Class Counsel within forty-eight (48) hours after all Individual Settlement Payments are

distributed to the Settlement Class. The Parties acknowledge that reimbursement for actual litigation costs ahead of distribution to the class is fair and reasonable given that those actual litigation costs were necessary to the prosecution of the case and recovery by the Settlement Class and do not provide any enrichment to Class Counsel ahead of the Settlement Class. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to each Class Counsel for the payments made pursuant to this paragraph. Defendants do not oppose this application. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys’ fees and costs.

3. Paragraph 64 of the Settlement Agreement shall read as follows:

Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Fund. The costs of administration for the disbursement of the Gross Settlement Fund ~~are currently estimated to~~ shall be Six Thousand Six Hundred Dollars and zero cents (\$6,600.00) as a capped amount, absent any malfeasance by either Party giving rise to additional expenses incurred by the Settlement Administrator. ~~This figure represents the Settlement Administrator’s estimate of its fees to administer this Settlement, based on information it was provided about the issues in the case, the complexity of the Settlement, and the approximate sizes of the putative Classes.~~ To the extent actual Settlement Administrations Costs are greater than \$6,600.00 as a result of malfeasance, the additional expense shall be borne by the Party committing such malfeasance, as determined by the Court if necessary, ~~such excess amount shall be taken out of the Net Settlement~~

~~Amount, unless it is determined by the Court that such increased costs were caused by misconduct by Defendants, whether collectively or individually. No fewer than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall provide the Parties with a statement detailing the costs of administration of this Settlement.~~ The Settlement Administrator shall be paid the Settlement Administration Costs no later than fourteen (14) calendar days after Defendants provide funds to the Settlement Administrator for disbursement under this Agreement. The Settlement Administrator, on Defendants' behalf, shall have the authority and obligation to make payments, credits and disbursements, including payments and credits in the manner set forth herein, to Settlement Class Members calculated in accordance with the methodology set out in this Agreement and orders of the Court.

DATED: August 7, 2020

LAW OFFICE OF KENNETH A. GOLDMAN, PC
LAW OFFICES OF SAHAG MAJARIAN, II

By:


KENNETH A. GOLDMAN, Esq.
Attorneys for Plaintiff, Alonso Hernandez

DATED: August 7, 2020

LAWRENCE BARTELS, LLP

By:

/s/ Robert S. Lawrence
ROBERT S. LAWRENCE, Esq.
Attorneys for Defendants, Wild Devil LLC and Joseph Manzella