

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC CHAVEZ, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

CONVERSE, INC., a Delaware
corporation *et al.*,

Defendants.

Case No.: 15-cv-03746-NC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

ORDER

Plaintiff Eric Chavez (“Plaintiff” or “Class Representative”), having made an application pursuant to Fed. R. Civ. P. Rule 23(e) for entry of an order (a) preliminarily approving the settlement of the litigation pursuant to the Class Action Settlement Agreement (the “Agreement”); (b) certifying the Settlement Class for purposes of proceedings in connection with the final approval of the Agreement; (c) approving the form of Notice of Class Action Settlement and directing the manner of delivery thereof; (d) approving Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, and Max W. Gavron of Diversity Law Group, William L. Marder of Polaris Law Group, and Dennis S. Hyun of Hyun Legal as Class Counsel and Plaintiff as Class Representative.

IT IS HEREBY ORDERED THAT:

1. All defined terms contained herein shall have the same meaning as set forth in the Agreement executed by the Parties and filed with this Court. *See* Dkt. No. 210-9 (“Agreement”).

2. Under the Agreement, Plaintiff Eric Chavez agrees to generally release Defendants and related parties from all known and unknown claims rising during the period from the beginning of the Plaintiff’s first interaction with any defendant to the date on which the Court enters the order of Final Approval of this Settlement. *See* Agreement § 2.15. Settlement Class Members agree to release Defendants and related parties from all claims under the wage and hour laws and regulations of the state of California that were or could have been asserted based on the facts pleaded in the Lawsuit. *See id.* § 2.32.

3. In return, Defendants agree to pay a Total Settlement Amount of \$1,875,000 in a settlement fund to the Settlement Class. *See id.* § 4.1. If the number of Settlement Class Members exceeds 2,700 by more than 10%, Converse agrees to increase the Total Settlement Amount by a proportionate percentage. *Id.* Each Settlement Class Member will receive \$10 for the settlement and release of their PAGA claims. *See id.* § 5.4. Settlement Class Members that do not request exclusion will receive an additional amount calculated in direct proportion to Converse’s best estimate of the Settlement Class Member’s Hours Worked, as determined from the Class Information provided to the Settlement Administrator by Converse. *Id.* If any portion

1 of the Total Settlement Amount is not successfully distributed to a Settlement Class Member,
 2 that portion will be paid to the *cy pres* beneficiary of the Settlement, Legal Aid At Work. *See*
 3 § 10.5. At no point will any amount of the Total Settlement Amount revert back to Defendant.
 4 *See id.* § 5.5.

5 4. The Agreement further provides that, subject to Court approval, the Total
 6 Settlement Amount will be used to pay the Settlement Administrator Expenses, Plaintiff's
 7 Service Award, and Class Counsel Award. *See id.* § 5.2. Plaintiff's Service Award must be
 8 approved by the Court and may not exceed \$10,000. *Id.* § 4.3. The Class Counsel Award must
 9 also be approved by the Court and may not exceed 33.3% or \$625,000 in fees and \$200,000 in
 10 costs and expenses. *Id.* § 4.4. This order does not approve the amount of Plaintiff's Service
 11 Award and the Class Counsel Award. Plaintiff and Class Counsel must file their request for such
 12 awards by **October 16, 2020**.

13 5. The Agreement is hereby PRELIMINARILY APPROVED as appearing on its
 14 face to be fair, reasonable, and adequate and to have been the product of serious, informed, and
 15 extensive arm's-length negotiations among the Plaintiff and Defendant Converse, Inc. (Plaintiff
 16 and Defendant collectively referred to as the "Parties"). In making this preliminary finding, the
 17 Court considered the nature of the claims, the relative strength of Plaintiff's claims, the amounts
 18 and kinds of benefits paid in settlement, the allocation of settlement proceeds among the class
 19 members, and the fact that a settlement represents a compromise of the Parties' respective
 20 positions rather than the result of a finding of liability at trial. The Court further preliminarily
 21 finds that the terms of the Agreement have no obvious deficiencies and do not improperly grant
 22 preferential treatment to any individual class member.

23 6. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), the Court
 24 conditionally certifies the Settlement Class defined as the following:

25 All individuals employed by Converse, Inc. as non-exempt/hourly
 26 employees in California who worked at any time during the
 27 Settlement Class Period (July 10, 2011, through and including
 28 November 19, 2019)

The Court previously certified a virtually identical class under Rule 23(a) and 23(b)(3).

1 See Dkt. No. 89. Here, the Court again finds, preliminarily and for purposes of proceeding
 2 pursuant to Fed. R. Civ. P. Rule 23(e), that the number of class members is sufficiently
 3 numerous, the class members are ascertainable based on the Defendant's records, the Plaintiff's
 4 claims are typical of those in the class, and that there is adequate and fair representation.
 5 Accordingly, the Settlement Class is hereby CERTIFIED for the purposes of the Settlement
 6 pursuant to Fed. R. Civ. P. 23(e).

7 7. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby APPOINTS as Class Counsel
 8 for the Settlement Class Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, and Max W.
 9 Gavron of Diversity Law Group, William L. Marder of Polaris Law Group, and Dennis S. Hyun
 10 of Hyun Legal. The Court finds that Class Counsel collectively have extensive experience and
 11 expertise in prosecuting wage and hour class actions.

12 8. Plaintiff is approved as the class representative for the Settlement Class Members.

13 9. The Court finds on a preliminary basis that the proposed settlement described in
 14 the Agreement (including the monetary provisions, the plan of allocation, the release of claims,
 15 the proposed award of attorneys' fees and costs and the Service Award) falls within the "range of
 16 reasonableness" and therefore grants preliminary approval of the Agreement. Based on a review
 17 of the papers submitted by the Parties and the lengthy litigation history of this case, the Court
 18 finds that the Agreement is the result of extensive arm's-length negotiations conducted after
 19 Class Counsel had adequately investigated the claims and became familiar with the strengths and
 20 weaknesses of those claims. The assistance of an experienced neutral mediator during the
 21 settlement process supports the Court's conclusion that the Agreement is non-collusive.

22 10. The Court hereby APPROVES Phoenix Settlement Administrators as the
 23 Settlement Administrator for the purposes of this settlement.

24 11. A hearing (the "Final Approval and Fairness Hearing") is hereby SCHEDULED
 25 to be held before the Court on **November 20, 2020, at 1:00 p.m.** by Zoom webinar for the
 26 following purposes:

- 27 a. to determine whether the Settlement is fair, reasonable, and adequate and
 28 direct its consummation pursuant to the terms of the Settlement Agreement;

- b. to determine whether Class Counsel and Plaintiff adequately represented the Settlement Class for the purpose of entering into and implementing the Agreement;
- c. to re-confirms the appointment of the Settlement Administrator and find that the Settlement Administrator has fulfilled its duties under the Settlement to date;
- d. to determine whether the Class Notice (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, and their right to exclude themselves from or object to the proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of Federal Rule of Civil Procedure 23(c)(2), due process, and any other applicable rules or law;
- e. to approve the Opt-Out List and determine that the Opt-Out List is a complete list of all Settlement Class Members who have timely and properly requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval order and Judgment;
- f. to direct that the Final Approval order and Judgment of dismissal shall be final and entered forthwith;
- g. without affecting the finality of the Final Approval order and Judgment, to direct that the Court retain continuing jurisdiction over Plaintiff, the Settlement Class, and Converse as to all matters concerning the administration, consummation, and enforcement of this Settlement Agreement;
- h. to adjudge that, as of the Final Approval Date, Plaintiff, and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List approved by the Court, and their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators, principals,

1 beneficiaries, representatives, agents, assigns, and successors, and/or anyone
2 claiming through them or acting or purporting to act for them or on their behalf,
3 regardless of whether they have received actual notice of the proposed Settlement,
4 have conclusively compromised, settled, discharged, and released the Named
5 Plaintiff's General Released Claims (in the case of Plaintiff) and Settlement Class
6 Members' Released Claims (in the case of the Settlement Class Members) against
7 Converse and the Released Parties, and are bound by the provisions of this
8 Agreement;

9 i. to affirm that, notwithstanding the submission of a timely and proper
10 request for exclusion, Settlement Class Members will still be bound by the
11 settlement and release of the PAGA Claims under the Final Judgment pursuant to
12 *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) as requests for exclusion do not
13 apply to the PAGA Claims, and further affirms that any claim by the LWDA for
14 civil penalties pursuant to PAGA are also extinguished;

15 j. to declare the Agreement and the Final Approval order and Judgment be
16 binding on, and have res judicata and preclusive effect as to all pending and future
17 lawsuits or other proceedings: (i) that encompass the Named Plaintiff's General
18 Released Claims and that are maintained by or on behalf of Plaintiff and/or his
19 Legally Authorized Representatives, heirs, estates, trustees, executors,
20 administrators, principals, beneficiaries, representatives, agents, assigns, and
21 successors, and/or anyone claiming through them or acting or purporting to act for
22 them or on their behalf, and (ii) that encompass the Settlement Class Members'
23 Released Claims and that are maintained by or on behalf of any Settlement Class
24 Member who has not been excluded from the Settlement Class as provided in the
25 Opt-Out List approved by the Court and/or their Legally Authorized
26 Representatives, heirs, estates, trustees, executors, administrators, principals,
27 beneficiaries, representatives, agents, assigns, and successors, and/or anyone
28 claiming through them or acting or purporting to act for them or on their behalf,

1 regardless of whether the Settlement Class Member previously initiated or
2 subsequently initiates individual litigation or other proceedings encompassed by
3 the Settlement Class Members' Released Claims, and even if such Settlement
4 Class Member never received actual notice of the Action or this proposed
5 Settlement;

6 k. to determine that the Agreement and the Settlement provided for herein,
7 and any proceedings taken pursuant thereto, are not, and should not in any event
8 be offered, received, or construed as evidence of, a presumption, concession, or
9 an admission by any Party of liability or non-liability or of the certifiability or
10 non-certifiability of a litigation class, or that PAGA representative claims may
11 validly be pursued, or of any misrepresentation or omission in any statement or
12 written document approved or made by any Party; provided, however, that
13 reference may be made to this Agreement and the Settlement provided for herein
14 in such proceedings as may be necessary to effectuate the provisions of this
15 Agreement, as further set forth in this Agreement;

16 l. to order the preliminary approval of the Settlement, certification of the
17 Settlement Class and final approval of the proposed Settlement, and all actions
18 associated with them, were undertaken on the condition that they shall be vacated
19 if the Settlement Agreement is terminated or disapproved in whole or in part by
20 the Court, or by any appellate court and/or other court of review, in which event
21 the Agreement and the fact that it was entered into shall not be offered, received,
22 or construed as an admission or as evidence for any purpose, including but not
23 limited to an admission by any Party of liability or non-liability or of any
24 misrepresentation or omission in any statement or written document approved or
25 made by any Party, or of the certifiability of a litigation class or the
26 appropriateness of maintaining a PAGA representative action, as further provided
27 in this Settlement Agreement;

28 m. to authorize the Parties, without further approval from the Court, to

1 mutually agree to and adopt such amendments, modifications, and expansions of
2 this Agreement, including all Exhibits hereto, as (i) shall be consistent in all
3 material respects with the Final Approval order and (ii) do not limit the rights of
4 Settlement Class Members; and

5 n. to rule upon such other and further provisions consistent with the terms of
6 this Settlement Agreement to which the Parties expressly consented in writing.

7 12. The Court will provide details regarding access to the Final Approval Hearing
8 closer to the date of the hearing.

9 13. The form of Class Notice is hereby APPROVED. No later than fourteen (14)
10 calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement
11 Administrator with the Class Information for purposes of preparing and mailing Notice Packets
12 to Settlement Class Members. The Class Information shall be confidential. The Settlement
13 Administrator shall not provide the Class Information to Class Counsel or Plaintiff or any third
14 party, or use the Class Information or any information contained therein for any purpose other
15 than to administer this Settlement. Specifically, for each Class Member, Defendant will provide
16 the Settlement Administrator with data Microsoft Excel spreadsheet and shall include, if
17 possible, for each Settlement Class Member: full name, last known mailing address, last four
18 digits of the social security number, and Hours Worked ("Hours Worked" means the best
19 approximation of the total number of hours a Settlement Class Member worked during the
20 Settlement Class Period for Converse as a non-exempt/hourly employee, based on the records
21 and data maintained by Converse). No more than thirty (30) calendar days after entry of the
22 Preliminary Approval Order, provided Defendant timely complied with its obligation in
23 Paragraph 6.1, the Settlement Administrator shall send a copy of the Class Notice by U.S. mail to
24 each potential Settlement Class Member (the Notice Date). Before the initial mailing of the
25 Class Notice, the Settlement Administrator shall make a good-faith attempt to obtain the most-
26 current names and postal mail addresses for all potential Settlement Class Members to receive
27 such postal mail, including (1) cross-checking the names and/or postal mail addresses it received
28 from Converse, and (2) reviewing the addresses with the National Change of Address Database.

1 If any Class Notice sent via U.S. mail to any potential Settlement Class Member is returned to
2 the Settlement Administrator with a forwarding address, the Settlement Administrator shall
3 forward the postal mailing to that address. If the Settlement Administrator is not provided a
4 forwarding address, the Settlement Administrator shall attempt to locate a current mailing
5 address for the Class Member by skip tracing using the Class Member's SSN and will mail the
6 Class Notice to the updated address identified. In the event that any Class Notice is returned as
7 undeliverable a second time, no further efforts shall be required. The Settlement Administrator
8 shall maintain a log detailing the instances Class Notices are returned as undeliverable.

9 14. The Court finds that the Notice Packet, along with the related notification
10 materials, constitute the best notice practicable under the circumstances and are in full
11 compliance with the laws of the State of California, the United States Constitution, and the
12 requirements of due process. The Court further finds that the notifications fully and accurately
13 inform the Settlement Class Members of all material elements of the proposed settlement, of the
14 Settlement Class Members' right to dispute their share of the settlement, of the Settlement Class
15 Members' right to be excluded from the Settlement Class, and of each Settlement Class
16 Member's right and opportunity to object to the settlement.

17 15. The Court hereby APPROVES the proposed Exclusion/Written Objection
18 Deadline of forty-five (45) calendar days from the initial mailing of the Notice Packet.

19 16. The Court hereby APPROVES the proposed procedure for opting out of the
20 Settlement Class. To be effective, such a request must include the Settlement Class Member's
21 name, address, and telephone number; a clear and unequivocal statement that the Settlement
22 Class Member wishes to be excluded from the Settlement Class; and the signature of the
23 Settlement Class Member. The date of the postmark on the return-mailing envelope shall be the
24 exclusive means used to determine whether a request for exclusion has been timely submitted.
25 Any member of the Settlement Class who requests exclusion from the settlement will not be
26 entitled to any share of the settlement and will not be bound by the Agreement or have any right
27 to object, appeal or comment thereon. Members of the Class who fail to submit a valid and
28 timely request for exclusion shall be bound by all terms of the Agreement and the Order and

1 Final Judgment, regardless of whether they otherwise have requested exclusion from the
2 settlement.

3 17. All reasonable costs of settlement and claims administration, including the
4 mailing of Class Notice, shall be paid for as provided in the Agreement.

5 18. All written objections and supporting papers must be submitted to the Court either
6 by mailing them to the Class Action Clerk, United States District Court for the Northern District
7 of California, San Jose Courthouse, Courtroom 5 - 4th Floor, 280 South 1st Street, San Jose, CA
8 95113, or by filing them in person at any location of the United States District Court for the
9 Northern District of California, no later than the Exclusion/Written Objection Deadline of
10 **September 21, 2020**. The date of the postmark on the return-mailing envelope or the filing date
11 (respective of the method used) shall be the exclusive means used to determine whether an
12 objection has been timely submitted. A written objection must contain at least the following: (i)
13 the objector's full name, address, telephone, and signature; (ii) a clear reference to the Action;
14 (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a
15 statement whether the objecting person or entity intends to appear at the Final Approval Hearing,
16 either in person or through counsel and, if through counsel, a statement identifying that counsel
17 by name, bar number, address, and telephone number. All objections shall be signed by the
18 objecting Settlement Class Member, even if the Settlement Class Member is represented by
19 counsel. Settlement Class Members who fail to make objections in the manner specified above
20 shall be deemed to have waived any objections and shall be foreclosed from making any
21 objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members who
22 submit a timely written objection have a right to appear at the Final Approval/Settlement
23 Fairness Hearing in order to present his or her objection to the Court orally, but is not required to
24 attend. No Settlement Class Member may appear at the Final Approval/Settlement Fairness
25 Hearing unless he or she has filed a written objection that complies with the procedures provided
26 in this paragraph. Settlement Class Members who submit a Request for Exclusion are not
27 entitled to object to the Settlement.

28 19. It is further ordered that pending further order of this Court, all proceedings in this

1 matter except those contemplated herein and as part of the settlement are stayed.

2 20. All Parties are otherwise ordered to comply with the terms of the Agreement.

3 21. The Agreement resolves all of the class and individual claims, as well as the
4 representative claim asserted under the Private Attorney Generals Act (the "PAGA"), California
5 Labor Code § 2698, *et seq.*, contained in the Complaint and as set forth in Plaintiff's PAGA
6 notices submitted to the California Labor and Workforce Development Agency.

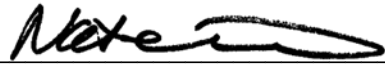
7 22. Jurisdiction is hereby retained over this Litigation and the Parties to the
8 Litigation, and each of the Settlement Class Members for all matters relating to this Litigation,
9 the Agreement, including (without limitation) all matters relating to the administration,
10 interpretation, effectuation, and/or enforcement of the Agreement and this Order.

11 23. Relevant dates are summarized below:

Final Approval Hearing	November 20, 2020, at 1:00 p.m.
Initial Mailing of Notice Packets	August 7, 2020
Deadline to Request Exclusion	September 21, 2020
Deadline to File Request of Awards	October 16, 2020

16
17 IT IS SO ORDERED.

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20 Dated: July 8, 2020

By: 

21 Hon. Nathanael M. Cousins
22 UNITED STATES MAGISTRATE JUDGE
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