

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; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 15-cv-03746-NC

**[PROPOSED] JUDGMENT AND ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

1 This matter came on for hearing on November 20, 2020, on Plaintiff Eric Chavez's
 2 ("Plaintiff" or "Class Representative") Motion for Attorneys' Fees and Costs and unopposed
 3 Motion for Final Approval of Class Action Settlement and for Judgment in this action on the
 4 terms set forth in the Class Action Settlement Agreement ("Settlement Agreement"). Due and
 5 adequate notice having been given to the members of the Class, and the Court having considered
 6 the Settlement Agreement, all papers and proceedings held herein, and all oral and written
 7 comments received regarding the proposed Class Settlement, and having reviewed the entire
 8 record in this action, *Chavez v. Converse, Inc.*, Case No. 15-cv-03746-NC ("the Action"), and
 9 good cause appearing, finds that:

10 WHEREAS, Plaintiff has alleged claims against Defendant Converse, Inc. ("Defendant")
 11 on behalf of himself and all individuals employed by Defendant as non-exempt/hourly
 12 employees in California who worked at any time during the Settlement Class Period (July 10,
 13 2011, through and including November 19, 2019); and

14 WHEREAS, on July 10, 2015, Plaintiff Eric Chavez filed a class action complaint against
 15 Defendant Converse, Inc. in the Superior Court of California for the County of Santa Clara, on
 16 behalf of himself and a proposed class consisting of "all non-exempt retail store employees who
 17 were employed by Defendants in the State of California at any time from July 10, 2011, through
 18 the present," and alleging the following seven wage-related causes of action: (1) violation of Cal.
 19 Labor Code §§ 1194, 1197, and 1197.1 (unpaid minimum wages); (2) violation of Cal. Labor
 20 Code §§ 510 and 1194 (unpaid overtime wages); (3) violation of Cal. Labor Code §§ 226.7 and
 21 512 (failure to provide meal breaks); (4) violation of Cal. Labor Code § 226.7 (failure to provide
 22 rest breaks); (5) violation of Cal. Labor Code § 226(a) (failure to provide accurate wage
 23 statements); (6) violation of Cal. Labor Code §§ 2698, *et seq.* (PAGA); and (7) violation of Cal.
 24 Bus. & Prof. Code §§ 17200, *et seq.* (unfair business practices). On August 17, 2015, the Action
 25 was removed to the United States District Court for the Northern District of California, Case No.
 26 15-cv-03746-NC, and the Plaintiff subsequently filed a First Amended Complaint on November
 27 23, 2015, adding claims for waiting time penalties under Cal. Labor Code § 203, which provides
 28 penalties to separated employees. On August 18, 2016, this Court granted Defendant's motion

for partial summary judgment as to Plaintiff's second cause of action for violation of Cal. Labor Code §§ 510 and 1194 in its entirety and Plaintiff's fifth, sixth, and seventh causes of action to the extent these claims were premised upon Defendant's failure to pay overtime wages as a result of the miscalculation of Plaintiff's regular rate of pay. This Court certified the class and the remaining claims on September 22, 2016, with the exception of Plaintiff's third cause of action for violation of Cal. Labor Code §§ 226.7 and 512 (failure to provide meal breaks), which was never certified. On March 20, 2020, this Court granted Defendant's motion for partial summary judgment as to Plaintiff's claim for waiting time penalties under Cal. Labor Code § 203 and his fifth cause of action for violation of Cal. Labor Code § 226(a) (failure to provide accurate wage statements) in their entirety; and

WHEREAS, Defendant expressly denies the allegations of wrongdoing and violations of law alleged in this Action; and further denies any liability whatsoever to Plaintiff or to the Settlement Class Members; and

WHEREAS, without admitting any liability, claim or defense the Parties determined that it was mutually advantageous to settle this Action and avoid the costs, delay, uncertainty and business disruption of ongoing litigation; and

WHEREAS, this Court granted preliminary approval of the parties' Class Settlement in this Action on July 8, 2020 ("Preliminary Approval Order"); and

WHEREAS, the Notice of Class Action Settlement ("Notice Packet") was sent to the Class Members in accordance with the Preliminary Approval Order; and

WHEREAS, a fairness hearing on the proposed Class Settlement having been duly held and a decision reached,

NOW, therefore, the Court grants final approval of the Class Settlement, and IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this Action, Defendant, and the Settlement Class Members.
2. The Court has determined that the Class Notice given to the Settlement Class Members fully and accurately informed all Settlement Class Members of all

material elements of the proposed Class Settlement — including the plan of distribution of Class Settlement Amount, the PAGA Payment, the application for Class Representative Enhancement to Plaintiff, and the application for Class Counsels’ Award — constituted the best notice practicable under the circumstances, constituted valid, due and sufficient notice to all Settlement Class Members, and complied fully with Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable laws.

3. The Court hereby grants final approval of the Class Settlement as fair, reasonable and adequate in all respects to the Settlement Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure, and orders the Parties and the Settlement Administrator to implement all remaining terms of the Settlement Agreement pertaining to the distribution of the Class Settlement Amount and Net Settlement Amount in accordance with the terms of the Settlement Agreement.
4. The plan of distribution as set forth in the Settlement Agreement providing for the distribution of the Net Settlement Amount to Settlement Class Members is hereby finally approved as being fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure.
5. As previously held in the Court’s Preliminary Approval Order, the Class for settlement purposes is appropriate under Fed. R. Civ. P. 23 and related case law and is defined as follows:

“[A]ll individuals employed by Defendant as non-exempt/hourly employees in California who worked at any time during the Settlement Class Period (July 10, 2011, through and including November 19, 2019).”
6. No individual requested exclusion from the Class.
7. As previously held in the Court’s Preliminary Approval Order, the Court appoints as Class Counsel, Diversity Law Group, P.C., Polaris Law Group LLP, and Hyun Legal APC.

- 1 8. The Court approves payment of a Class Representative Enhancement of \$10,000
2 to Plaintiff for his service to the Class, which shall be paid from, and not in
3 addition to, the Total Settlement Amount.
- 4 9. The Court approves the payment of attorneys' fees in the amount of \$625,000 to
5 Class Counsel, which shall be paid from, and not in addition to, the Total
6 Settlement Amount.
- 7 10. The Court also approves the additional payment of attorneys' costs in the amount
8 of \$166,554.46 to Class Counsel to reimburse them for their expenses, which
9 shall be paid from, and not in addition to, the Total Settlement Amount.
- 10 11. The Court approves a payment of up to \$25,000 to the Settlement Administrator
11 out of the Total Settlement Amount.
- 12 12. Any checks for Individual Settlement Payments that are not cashed within 180
13 days shall be redistributed to those Settlement Class Members who received and
14 cashed their Individual Settlement Payment check, and any of the redistribution
15 checks that are not cashed within 180 days shall be transmitted to Legal Aid At
16 Work.
- 17 13. All claims asserted in this Action are DISMISSED WITH PREJUDICE as to
18 Plaintiff and the Settlement Class Members pursuant to the terms of the
19 Settlement Agreement. Each party shall bear his, her or its own costs and
20 attorneys' fees, except as provided in the Settlement Agreement and as set forth
21 above in this Order and as set forth in any other Order issued in response to the
22 application by Class Counsel for an award of attorneys' fees, costs, and expenses,
23 which hearings took place concurrently with the hearing for this Order.
- 24 14. Upon entry of this Order and the accompanying Judgment, the claims in this
25 Action and the Released Claims of each Settlement Class Member against
26 Defendant, and against any and all of the Released Parties (Converse and its past,
27 present and future divisions, affiliates, predecessors, successors, assigns,
28

shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, parents, subsidiaries, and privies; but excluding NIKE Retail Services, Inc.), are fully, finally, and forever released, relinquished and discharged pursuant to the terms of the Settlement Agreement to the maximum extent permitted by law. The Released Claims are defined as follows:

“Any and all present and past 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 or any amendments thereto, including but not limited to, all statutes mentioned in the Lawsuit and corresponding provisions of the relevant California Wage Order, including but not limited to California Labor Code sections 201-203, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, the Private Attorneys General Act (“PAGA”) (Labor Code Sections 2698-2699.5) and California Business and Professions Code sections 17200, et seq., as related to claims for: overtime; minimum wage; meal period premiums; rest break premiums; wage statements; waiting time penalties; restitution; civil and statutory penalties; interest; injunctive relief; and attorneys’ fees, costs and expenses.” The “Settlement Class Members’ Released Claims” are released from July 10 2011 through and including November 19, 2019.

15. Each Settlement Class Member is bound by this Order and the Judgment, including, without limitation, the release of claims as set forth in the Settlement Agreement.
16. This Order, the Judgment, the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by Defendant of any liability, claim or wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim or wrongdoing in this Action or in any other

proceeding.

17. Without affecting the finality of this Order and the accompanying Judgment filed herewith, the Court reserves exclusive and continuing jurisdiction over the Action, the Plaintiff, the Settlement Class Members, and Defendant for the purposes of supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, Preliminary Approval Order, distribution of the Class Settlement Amount, the Final Judgment, and this Order.

IT IS SO ORDERED.

Dated: _____ By: _____
(on or after December 15, 2020) Hon. Nathanael M. Cousins
UNITED STATES MAGISTRATE JUDGE