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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE OCHOA, individually, and on behalf of all other similarly situated current and former employees of GREENSTONE MATERIALS, INC.,

Plaintiff,

vs.

GREENSTONE MATERIALS, INC., a California Corporation; and DOES 1 through 100 inclusive,

Defendants

BRANDON K. LACAS, in his individual and representative capacity,

Plaintiff,

v.

GREENSTONE MATERIALS, INC., A California Corporation; and DOES 1-10,

Defendants

LEAD CASE NO.: 30-2016-00875367-CU-OE-CXC; Consolidated with 30-2017-00911572

[Assigned for all purposes to the Hon. Peter Wilson, CX102]

DECLARATION OF KIERAN D. HARTLEY IN SUPPLEMENTAL SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF PROVISIONAL SETTLEMENT CLASS

Date: September 26, 2019
Time: 2:00 PM
Dept: CX102

DECLARATION OF KIERAN D. HARTLEY

I, Kieran D. Hartley, respectfully declare as follows:

1. I am now and have been at all times relevant to this Declaration an Active Member of the State Bar of California, an attorney working for Rastegar Law Group, A Professional Corporation ("RLG"), and counsel of record for Named Plaintiff Jose Ochoa ("Named Plaintiff") in the above–captioned action, filed in the Superior Court of the County of Los Angeles. I make this declaration on the basis of personal firsthand knowledge, unless another source of information or belief clearly appears from the context; as to all such matters, I believe them to be true. If called as a witness, I could and would readily and competently testify to all matters stated within.

2. I make this declaration in supplemental support of Named Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Certification of Provisional Settlement Class.

3. On or around August 15, 2019, this Court issued an order continuing the hearing on Plaintiff's Motion to September 26, 2019 and directed the Parties to address a number of issues regarding the Motion. For convenience and reference, I shall respectfully and briefly summarize my understanding of the points raised by this Court's August 15, 2019 order and then address each point in turn.

4. Attached as **Exhibit A** is a true and correct copy of the redlined version of the revised Class Notice.

5. Attached as **Exhibit B** is a true and correct copy of the "clean" version of the revised Class Notice.

6. Attached as **Exhibit C** is a true and correct copy of the Amendment of Stipulation of Settlement and Release, which is currently awaiting signatures by all interested parties. A fully executed copy, with all requisite signatures, is forthcoming and is anticipated to be filed prior to the pending Preliminary Approval Hearing.

1. The Court seeks further clarification as to ¶ A.4 and what the Settlement Agreement means by "who have not executed a release of all claims against Greenstone Materials, Inc."

a. I can confirm, based on my own understanding of the settlement agreement and based on further confirming discussions with co-counsel (Corbett Williams) and opposing counsel (Matthew Miller), that the Settlement Agreement's carveout for those who have executed a release of ***all claims*** against Greenstone Materials, Inc. is ***not*** in reference to the DOL settlement. Rather, following the initial filing of the class action complaint, Defendant Greenstone affirmatively executed settlement agreements with full releases with several of its more high-wage employees, who technically fall within the proposed class definition. Given that those employees voluntarily released their claims, the Parties agreed that the fairest outcome for the class would allow those particular class members to participate in the common fund to the extent of their post-release workweeks.

2. Explain why there are two releases represented in ¶¶ D.16 and D.17.

a. We have resolved any apparent discrepancy with superseding release language in the Amendment to the Settlement Agreement.

3. Explain the valuation of the overtime and minimum wage claims, and further explain the outcome of the DOL settlement.

a. It is my understanding based on telephonic conversations that I conducted with opposing counsel that Plaintiff Lacas is the only identified class member who rejected the DOL release of overtime claims by virtue of not depositing the settlement check disbursed under DOL direction.

b. The DOL Investigation concluded on approximately September 18, 2015. In order to determine whether the DOL investigation successfully modified Defendant's practices regarding overtime, I looked to time punches and pay periods following that date. Based on my review of the sample of data produced to Plaintiffs, both Mr. Williams and I concluded that the post-investigation punches and corresponding pay period stubs reflected a practice in which Greenstone appropriately accounted for overtime hours on each shift (based on the time punches) and then paid the appropriate amount of overtime and double time for the corresponding pay period.

4. Which particular claims were difficult to value, and why are class members releasing as to those claims?

a. The primary driver of valuation derived from meal periods and rest breaks. For the aforementioned reasons, we did not believe that there was any demonstrable value to the overtime and minimum wage claims following the DOL investigation and settlement, the FLSA based claims having been resolved and the practices having been made compliant. This does not mean that the overtime and minimum wage claims are of absolutely no value, as there could exist small violations in the data. The Failure to Permit Inspection claim inherently demands individual inquiries and cannot be brought as a class action, thus meriting little ascertainable value to the class. The UCL claim is a derivative claim that, in essence, asserts the same damages that can be alleged in for the meal period and rest break premiums. It is thus inherently incorporated into the meal and rest break calculation.

b. Finally, we did not attach a strict calculated value to the Failure to Timely Pay Wages or Failure to Provide Accurate Statements and Maintain Required Records claims. Those claims are derivative of the meal period and rest period claims, in the sense that such claims trigger if, and only if, we prove underlying break violations. The reason those claims are difficult to liquidate is because it is not entirely certain whether a failure to furnish, for example, a meal period premium and reflect such premium on a paystub by default whenever a meal period was short, late, or otherwise noncompliant meal period means that the employer has legally failed to pay all wages due and failed to furnish accurate wage statements for the purpose of §§ 203 and 226. Section 226 claims carry a cap of $4,000 per employee, and § 203 carry a value of 30 days multiplied by 8 hours multiplied by that particular employee's final hourly wage. Thus, the liability for these derivative claims could be immense or absolutely worthless, with quite a flux of legal uncertainty.

c. Thus, I believe that claims other than the premiums contain a residual, difficult to ascertain value that has affected the valuation of the settlement in some way. In short, the reason that all claims are being released is because they are still actively part of the Consolidated Class Action Complaint. My understanding of the arms-length, bargained for deal is that Defendant Greenstone is paying the Gross Settlement at the current price in order to get a complete release of all claims and not incur any further, expensive litigation on matters that can be laid to rest in this Action. In my understanding, if we were to limit the scope of the release *only* as to meal period and rest break premiums, then one of two consequences would ensue. At best, the Gross Settlement offer on the table would have been drastically lower than the figure we achieved for the full release. At worst and most likely, Defendant would have refused to settle at all, and we would instead be risking a complete failure to achieve class certification or prevail at trial, neither outcome of which would benefit the class. In other words, I believe that the other claims are reasonably "baked" into the value of the settlement in light of the joined purposes of Defendant and the class in this uncertain litigation. Ultimately, it was our goal to avoid the risk of losing a motion for class certification, losing at trial, or risking an effective loss by bankruptcy while delivering a substantial and immediate financial value/relief to our Class Members and holding Defendant Greenstone accountable for its past conduct, as the DOL has done. I believe that we accomplished this objective.

5. The PAGA valuation.

a. We arrived at a valuation of $3,000 for the PAGA settlement for several reasons. First and foremost, Mr. Williams and I concluded that this valuation will be to the greatest benefit of the class members, who will receive their pro-rated share based on the full value of the net settlement, but who only receive a pro-rated share of 25% of whatever is deemed PAGA related. Second, in my experience with class action settlements, I concluded that $3,000 is a reasonable number in line with other class action settlements of this gross value. For instance, in 2018, RLG received preliminary and final approval for a $400,000 gross settlement with a $5,000 allocation to PAGA penalties. Third, when determining a valuation for PAGA allocations in relation to all-in settlements, I am cognizant of the fact that potential PAGA penalties, while holding a potentially high theoretical value, are subject to a steep discount under the Court's discretion for any number of equitable reasons. *Thurman v. Bayshore Transit Management*, 203 Cal.App.4th 1112 (2012). For the foregoing reasons, and given that the LWDA has not objected, I believe that the valuation presented is reasonable.

b. We arrived at the valuation of $3,000 irrespective of the 15%/42.5%/42.5% characterization between wages/interest/penalties, respectively. For reasons that I will explain in Paragraph 6, we came to the decision to characterize the gross settlement in this manner for its own reasons, which is not related to PAGA valuation. Nevertheless, as I would describe it, we carved out $3,000 as PAGA penalties, and then we characterized the remaining gross settlement as 42.5% labor code penalties, which are different in kind and in value from PAGA penalties.

6. The characterization of 15%/42.5%/42.5% wages/interest/penalties.

a. As I have described previously, the valuation in this Settlement are not *strictly* for meal period and rest break premiums, although those claims were more amenable to calculation estimates and drove much of the value. We also find that the residual or potential value of the derivative (non-PAGA) claims could carry either great or very little value, all of which would be penalties. Additionally, given the age of this case, there would be enough statutory interest to sustain a finding of 42.5% interest. In this context, we find that the current characterization split is one of several reasonable ways in which to split the common fund's characterization. Mr. Williams and I both believe that the characterization of the common fund mostly as penalties and interest would allow class members to enjoy most of their disbursement as immediate financial relief, not subject to automatic withholdings. For this reason, we agreed to the characterization as such.

7. At Final Approval, counsel to provide billing records in support of fees and costs. Additionally, are there fee splitting arrangements?

a. We will provide documentation to support our request for fees and costs.

b. Upon consolidation, Rastegar Law Group and The Law Offices of Corbett H. Williams entered into a fee sharing arrangement, which adopts Mr. Williams's prior fee sharing arrangement with the firms Asaf Agazanof APC, the Law Office of Todd M. Friedman, and Briles & Associates (Tracy Briles). There are no other fee sharing arrangements. The current fee sharing arrangement is as follows:

    i. 50% RLG

    ii. 40% Corbett Williams

iii. 4% Asaf

iv. 4% Friedman

v. 2% Briles

8. The Settlement must result in a Judgment, rather than dismissal of the Action. Reference to Par. F.26.

a. Plaintiffs will be submitting a proposed final judgment, not a request for dismissal, in our Final Approval Packet. This is our normal practice. The Settlement Agreement makes clear that Plaintiffs' duty will be to submit a final judgment, which shall be binding on all non-excluded class members. *See* ¶¶ H.35(c) and Superceded/Amended D.16 and D.17.

9. Plaintiffs are to resubmit *Golba* declarations for final approval of their enhancement awards.

a. In accordance with our normal class action practices, we shall do so.

10. Confirm that a returned as undelivered packet after 30 days will overturn the presumption of receipt.

    a. This issue has been addressed in Amended ¶ F.28.

11. Report all exclusions and objections for the final report hearing.

    a. Plaintiffs shall do so.

12. The Settlement Administrator is to provide an estimated high/low payout for class members and an estimated payout to Plaintiffs.

    a. Plaintiffs shall direct the administrator to do so. It is my experience that the Director of Case Management at Phoenix Settlement Administrators includes this information as a matter of course.

13. The Parties shall file all disputes submitted by Class Members for the Court's review, oversight, and approval.

    a. Plaintiffs shall direct Phoenix Settlement Administrators forward this information as part of their usual and regular reporting to Counsel.

14. The Class Notice should include an exclusion form.

    a. The Class Notice is accordingly revised.

15. The Settlement Agreement requires a CCP § 664.6 provision.

a. The Agreement is accordingly revised.

16. Any supplemental briefing and amendments must be filed with the LWDA, along with notice of the continued hearing.

    a. Please see the attached Proof of Service.

17. Please revise the Class Notice.

    a. The Class Notice has been accordingly revised.

18. Should the Class Notice be provided in any language other than English?

    a. Class Counsel have conferred with Defendant and believe that it is appropriate for the Class Notice to be provided in Spanish, as well as English.

19. Add page numbers to the Class Notice.

    a. The Class Notice has been accordingly revised.

20. Class Notice language is to state "not to exceed" and "up to."

    a. The Class Notice has been accordingly revised.

21. The Class Notice definition of the class must be congruent with the Settlement Agreement definition of the class.

    a. The Class Notice has been accordingly revised.

22. The Class Notice should state that re-mailed notices will be extended 15 days from the date of re-mailing.

    a. The Class Notice has been accordingly revised.

23. Emphasize that objectors will still be bound by the settlement if their objections fail.

    a. The Class Notice has been accordingly revised.

24. Provide a link to the Court's website and instructions to access the docket for this Action.

    a. The Class Notice has been accordingly revised.

25. Revise the proposed order to address the above issues.

    a. The Proposed Order is revised and re-submitted.

26. Points 26 through 29 are addressed with the revised proposed order.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 17, 2019, at Torrance, California.

Kieran D. Hartley