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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE**

ARMANDO GARCIA-AVILA, as an  
individual and on behalf of all others  
similarly situated,

Plaintiff,

v.

ORANGE COUNTY ERECTORS, INC., a  
California Corporation; and DOES 1 through  
100,

Defendants.

Case No.: 30-2022-01284202-CU-OE-CXC

*[Assigned for all purposes to the Honorable  
Melissa R. McCormick, Dept. CX104]*

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN  
SUPPORT OF PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: December 12, 2024

Time: 2:00 p.m.

Dept.: CX104

Complaint Filed: October 5, 2022

Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 Plaintiffs Armando Garcia-Avila and Roberto Rincon Lopez (“Plaintiffs”) hereby submit  
3 the following supplemental brief in response to the Court’s August 15, 2024 Tentative Ruling  
4 regarding Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (the “Ruling”).  
5 After reviewing the Court’s Ruling, Plaintiffs and Defendant Orange County Erectors, Inc.  
6 (“Orange County Erectors”) (Plaintiffs and Orange County Erectors are collectively referred to  
7 as the “Parties”) amended the Stipulation of Settlement (“Settlement Agreement”), Notice of  
8 Pendency of Class and PAGA Action (“Class Notice”), and Notice of Estimated Settlement  
9 Award, and drafted the Objection Form, all in accordance with the issues identified by the Court.

10 Plaintiffs address each issue raised in the Court’s Ruling. The Amendment to the  
11 Stipulation of Settlement is attached as Exhibit A to the Declaration of Sean M. Blakely (“Blakely  
12 Decl.”), filed concurrently herewith. The amended Class Notice is attached as Exhibit B, and a  
13 red-lined version of the Class Notice showing all changes is attached as Exhibit C to the Blakely  
14 Decl. The amended Notice of Estimated Settlement Award is attached as Exhibit D, and a red-  
15 lined version of the Notice of Estimated Settlement Award showing all changes is attached as  
16 Exhibit E to the Blakely Decl. The Objection Form is attached as Exhibit F to the Blakely Decl.  
17 A red-lined version of the Proposed Order is attached to the Blakely Decl. as Exhibit G.

18 **As to the Settlement**

19 **1. Calculation of PAGA Payments**

20 The Court’s Ruling asks, “*Why are the PAGA payments calculated based on workweeks*  
21 *when the PAGA statute assesses penalties based on pay periods?*”

22 The Parties have revised Section 4(B)(iv) of the Settlement Agreement, the Class Notice,  
23 and the Notice of Estimated Settlement Award to address the Court’s concerns. Payments from  
24 the PAGA Amount are now calculated based on the proportionate number of pay periods worked  
25 during the PAGA Period. *See* Blakely Decl., Exhibits A, C, and E.

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1           **2.     Objection Form**

2           The Court’s Ruling states, “*The settlement contemplates that a separate exclusion form*  
3 *will accompany the notice. The court prefers the notice also be accompanied by a separate*  
4 *objection form.*”

5           The Parties have submitted a separate Objection Form in accordance with the Court’s  
6 request. *See* Blakely Decl., Exhibit F.

7           **3.     Estimated High and Low Payments to Class Members**

8           The Court’s Ruling states, “*The parties should provide the estimated high and low*  
9 *payments to class members, the estimated high and low PAGA payments, and each named*  
10 *plaintiff’s anticipated total amount to be received (including for any individual claims and*  
11 *excluding any enhancement payment).*”

12           The highest estimated Settlement Award to a Settlement Class member is approximately  
13 \$7,695.80. The lowest estimated Settlement Award to a Settlement Class member is  
14 approximately \$23.90. The highest estimated portion of the PAGA Amount is approximately  
15 \$119.14. The lowest estimated portion of the PAGA Amount is approximately \$0.74. Plaintiff  
16 Garcia-Avila’s anticipated total recovery is estimated to be approximately \$9,416.96 (\$1,888.10  
17 Settlement Award + \$28.86 PAGA payment + \$7,500 Enhancement Payment). Plaintiff Lopez’s  
18 anticipated total recovery is estimated to be approximately \$13,203.08 (\$5,616.50 Settlement  
19 Award + \$86.58 PAGA payment + \$7,500 Enhancement Payment).

20           **4.     Settlement Administrator Fees**

21           The Court’s Ruling states, “*The motion seeks preliminary approval of up to \$9,000 in*  
22 *settlement administration fees. The settlement administrator states the settlement administration*  
23 *fees will not exceed \$8,000. Lawrence Decl. (ROA 86) ¶ 16 & Ex. B. In light of this evidence, the*  
24 *court is unlikely to approve settlement administration fees of more than up to \$8,000.*”

25           The Parties have revised the Settlement Agreement to lower the settlement administration  
26 costs to \$8,000.00. *See* Blakely Decl., Exhibit A.

27           **5.     Enhancement Payments**

28           The Court’s Ruling states, “*Absent unique circumstances, the court is unlikely to approve*

enhancement payments in excess of \$5,000 for each named plaintiff. If unique circumstances warrant the higher amount plaintiffs seek, plaintiffs should submit declarations and/or other information explaining those circumstances.”

Plaintiffs will submit declarations in connection with their Motion for Final Approval of Class Action Settlement.

**6. Other Class, Representative or Other Collective Actions**

The Court’s Ruling states, “*Defendant should advise, in a declaration filed with the court, whether, after making reasonable inquiry, defendant is aware of any class, representative or other collective action in any court that asserts claims similar to those asserted in this action. If any such actions are known to exist, the declaration shall also state the name and case number of any such case and the procedural status of that case, and describe the impact of the settlement on that case.*”

Plaintiffs are not aware of any such related or overlapping matters. *See* Blakely Decl., at ¶ 13. Defendant has similarly represented that no such actions exist. *See* Declaration of Spencer W. Waldron, at ¶ 3.

**As to the Notice**

**7. Revisions to the Class Notice**

The Court’s Ruling states, “*The Notice is to be revised consistent with the above.*”

The Parties have revised the Class Notice in accordance with the issues addressed above. *See* Blakely Decl., Exhibits B and C.

**8. Certified Translations**

The Court’s Ruling states, “*The settlement administrator’s estimate includes a charge for language translation. Does the notice packet need to be translated into any language other than English? If so, copies of the certified translation(s) should be filed with the court and attached to the proposed order as exhibits.*”

Plaintiffs are providing certified Spanish translations of the Class Notice, Notice of Estimated Settlement Award, Request for Exclusion Form, and Objection Form. *See* Exhibits 7-10 to [Amended Proposed] Order.

1           **9.     PAGA Release**

2           The Court’s Ruling states, “*The notice should advise that aggrieved employees will be*  
3 *bound by the PAGA release, even if they do not cash their checks.*”

4           The Parties have revised the Class Notice to include the above language. *See* Blakely  
5 Decl., Exhibits B and C.

6           **10.   Judgement on Settlement Administrator Website**

7           The Court’s Ruling states, “*The notice should state that the judgment will be posted on*  
8 *the settlement administrator’s website for the case for at least 180 days.*”

9           The Parties have revised the Class Notice to include this information. *See* Blakely Decl.,  
10 Exhibits B and C.

11          **11.   Final Approval Hearing**

12          The Court’s Ruling states, “*The parties should propose a date for the final approval*  
13 *hearing. The court holds final approval hearings on Thursdays at 2:00 p.m. The motion for final*  
14 *approval should be filed and served at least 16 court days before the hearing.*”

15          The Parties have revised the Class Notice to propose Thursday, May 1, 2025, at 2:00 p.m.  
16 as a date for the Final Approval Hearing. *See* Blakely Decl., Exhibits B and C.

17          **12.   Further Edits to Class Notice**

18          The Court’s Ruling states, “*The capitalized sentence on page 6 of the notice starting with*  
19 *‘BY ORDER OF THE COURT’ should be removed.*”

20          The Parties revised the Class Notice to remove the above sentence. *See* Blakely Decl.,  
21 Exhibits B and C.

22          **As to the Proposed Order (ROA 61)**

23          **13.   Revisions to Proposed Order**

24          The Court’s Ruling states, “*The proposed order is to be revised consistent with the issues*  
25 *addressed above.*”

26          The [Amended Proposed] Order was revised to be consistent with the Court’s Ruling. *See*  
27 Blakely Decl., Exhibit G.

28          ///

1           **14.     Caption Page**

2           The Court’s Ruling states, “*Counsel’s information should be removed from the caption*

3 *page.*”

4           The [Amended Proposed] Order has been revised to remove Counsel’s information from

5 the caption page. *See* Blakely Decl., Exhibit G.

6           **15.     Revisions to Title and Footer**

7           The Court’s Ruling states, “*The phrase “AND PAGA” should be inserted after*

8 *“ACTION” in title and footer.*”

9           The title and footer of the [Amended Proposed] Order were revised to include the above

10 language. *See* Blakely Decl., Exhibit G.

11           **16.     Exhibits to Proposed Order**

12           The Court’s Ruling states, “*The settlement agreement and notice packet (including any*

13 *certified translations) should be attached as exhibits to the proposed order.*”

14           The [Amended Proposed] Order attaches the initial Settlement Agreement, the

15 Amendment to the Settlement Agreement and the notice packet and the certified translations as

16 Exhibits. *See* Blakely Decl., Exhibit G.

17           **17.     Revisions to Paragraph 1 of Proposed Order**

18           The Court’s Ruling states, “*Paragraph 1 should include findings that the settlement is*

19 *fair, reasonable, and adequate and in the best interests of the class members.*”

20           Paragraph 1 of the [Amended Proposed] Order has been revised to include the above

21 language. *See* Blakely Decl., Exhibit G.

22           **18.     Revisions to Paragraph 2 and 3 of Proposed Order**

23           The Court’s Ruling states, “*In paragraphs 2 and 3, the word “preliminarily” should be*

24 *inserted before “designates” in three places.*”

25           Paragraphs 2 and 3 of the [Amended Proposed] Order have been revised to include the

26 above language. *See* Blakely Decl., Exhibit G.

27           **19.     Removal of Paragraph 7**

28           The Court’s Ruling states, “*Paragraph 7 should be removed.*”

Paragraph 7 has been removed from the [Amended Proposed] Order. *See* Blakely Decl., Exhibit G.

**20. Addition to Paragraph 8**

The Court's Ruling states, "*In paragraph 8, the following phrase should be inserted after 'terms of the Settlement': ', and to otherwise administer the settlement in accordance with the Stipulation of Settlement.'*"

Paragraph 8 of the [Amended Proposed] Order has been revised to insert the above language. *See* Blakely Decl., Exhibit G.

**21. Revision to Paragraph 12**

The Court's Ruling states, "*Paragraph 12 should state that the motion for final approval shall be filed and served at least 16 court days before the hearing.*"

Paragraph 12 of the [Amended Proposed] Order has been revised to include the above language. *See* Blakely Decl., Exhibit G.

**22. Removal of Paragraph 15**

The Court's Ruling states, "*Paragraph 15 should be removed.*"

Paragraph 15 has been removed from the [Amended Proposed] Order. *See* Blakely Decl., Exhibit G.

**23. Court Retains Jurisdiction**

The Court's Ruling states, "*The proposed order should state that the court retains jurisdiction to enforce the settlement pursuant to Civil Procedure Code section 664.6.*"

The [Amended Proposed] Order has been revised to include this language in Paragraph 14. *See* Blakely Decl., Exhibit G.

Dated: November 26, 2024

Respectfully submitted,  
HAINES LAW GROUP, APC

By:   
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