

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Attorneys for Plaintiff SCOTT ALLEN ATHEY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SCOTT ALLEN ATHEY, as an individual and
on behalf of all employees similarly situated,

Plaintiff,

v.

WALKER EVANS ENTERPRISES, a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants

Case No.: CVRI2301534

[Assigned for all purposes to Hon. Harold W. Hopp,
Dept. 1]

**PLAINTIFF'S COMPLIANCE CHART IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Reservation ID: 412063266999
Date: May 22, 2024
Time: 8:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Harold W. Hopp

Action Filed: March 27, 2023
Trial Date: Not Set

CASE MANAGEMENT ORDER COMPLIANCE CHART

Athey v. Walker Evans Enterprises

Riverside County Superior Court Case N CVRI2301534

Case Management Order (“CMO”) requirements	Requirements met in moving papers
The settlement agreement shall not provide that any order, notice, form, or judgment shall include any provision that this order prohibits from being included in such a document. (Section G.1.a.)	Settlement agreement does not provide any such provision.
The settlement agreement shall be written, signed by all necessary parties, and filed, either in the form of a separate stipulation or as an authenticated attachment to a declaration of counsel. (Section G.1.b)	Settlement Agreement is in compliance with this Section of CMO.
Regardless of the terms of the proposed settlement, counsel shall not file a Notice of Settlement of Entire Case (Judicial Council form CM-200). (Section G.2)	The Parties have not filed a Notice of Settlement.
The motion shall be supported by a declaration from the plaintiff’s attorney that, <i>inter alia</i> : i. Sets forth the attorney’s estimate of the number of individuals in the class and for any settlement that includes a claim for statutory penalties under PAGA, sets forth the attorney’s estimate of the number of aggrieved employees employed during the applicable PAGA period. (Section G.3.a.i.)	Tunyan decl., ¶ 9.
The motion shall be supported by a declaration from the plaintiff’s attorney that, <i>inter alia</i> : ii. (A) Sets forth the attorney’s estimate of the total amount of damages. monetary penalties or other relief that the class would be awarded on each claim if that claim were entirely successful at trial; (B) explains how that estimate was calculated; and (C) states the collective total for all of the claims. (Section G.3.a.ii)	Tunyan decl., ¶ 17.

The motion shall be supported by a declaration from the plaintiff's attorney that, <i>inter alia</i>: iii. Sets forth: (A) the attorney's estimate as to each claim of the total amount of damages, monetary penalties or other relief that the class could reasonably expect to be awarded at trial, taking into account difficulties of proof, the defendant's defenses, and other attendant risks; (8) the attorney's reasons for those estimates; (C) and the likely award at trial for all claims collectively. (Section G.3.a.iii)	Tunyan decl., ¶¶ 15, 17.
The motion shall be supported by a declaration from the plaintiff's attorney that, <i>inter alia</i>: iv. Sets forth the attorney's estimate of the recovery by the average class member, exclusive of any amounts payable under the settlement of any PAGA claim, if the settlement were approved. If the recovery by different class members will vary, the attorney shall also estimate the range (high and low) of possible recoveries. (Section G.3.a.iv)	Tunyan decl., ¶ 20.
The motion shall be supported by a declaration from the plaintiff's attorney that, <i>inter alia</i>: v. Sets forth the attorney's estimate of the recovery by the individual aggrieved employees under the proposed settlement of any PAGA claim. (Section G.3.a.v)	Tunyan decl., ¶ 20.
The motion shall be supported by a declaration from the plaintiff's attorney that, <i>inter alia</i>: vi. Describes in detail the nature and extent of the formal and informal discovery exchanged and other factual investigation conducted to determine the size of the class and the strength of the class claims. (Section G.3.a.vi)	Tunyan decl., ¶¶ 5, 7.
The motion shall be supported by a declaration from the plaintiff's attorney that, <i>inter alia</i>: vii. States (A) whether the attorney is aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this	Tunyan decl., ¶ 21.

1 2 3 4 5 6 7 8 9 10	action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this action and (B) whether the attorney made reasonable inquiry of other members of the attorney's law firm and any associated law firm to determine whether those individuals are aware of any such similar actions. If any such similar actions are known to exist, the declaration shall also state (C) the name and case number of any such case, the nature of the claims asserted, the definition of the class or other parties on whose behalf the action is brought, and the procedural status of that case. (Section G.3.a.vii)	
11 12 13 14 15 16 17 18 19	The motion shall be supported by a declaration from the defendant's attorney that states (i) whether the attorney is aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this action and (ii) the name and case number of any such case, the nature of the claims asserted, the definition of the class or other parties on whose behalf the action is brought, and the procedural status of that case. (Section G.3.b)	Declaration of Richard D. Marca in support of Plaintiff's Motion for preliminary approval of this Class and PAGA action settlement ("Motion") ¶ 2.
20 21 22 23 24 25 26 27 28	The motion shall describe how the value of any uncashed checks, unpaid cash residue, or other unclaimed or abandoned funds will be distributed. i. In a wage-and-hour case or any other case seeking relief on behalf of a class of employees, the Court believes that redistribution of the value of uncashed settlement check to those class members who have cashed their checks will better serve the public interest and the interest of the class than distribution in the manner otherwise prescribed by <i>California Code of Civil Procedure</i> section 384(b). If one or	Tunyan decl., ¶ 43; Declaration of Richard D. Marca, ¶ 4; Declaration of Pablo Ramirez on behalf of Cy Pres Recipient in support of Motion; Settlement Agreement, ¶35.; Motion ¶ 4:19-22. Section G.3.c. v is not applicable as the Settlement Agreement does not provide that the unclaimed funds will be deposited into the Industrial Relations Unpaid Wage Fund.

more of the parties disagree, then the motion shall be supported by a declaration from a party or the party's counsel explaining the factual basis for the disagreement. ii. In any other type of case, the motion shall describe the intended distribution of unclaimed funds in accordance with California Code of Civil Procedure section 384(b), and shall explain the reason for choosing proposed recipient as opposed to other potential recipients considered. iii. The motion shall be supported by a declaration from a knowledgeable person from the proposed recipient. iv. The declarations of the attorneys for the plaintiff and for the defendant shall describe both (A) any relationship between the proposed recipient and (1) any class representative or other party, (2) any officer, director, or manager of any party, or (3) any attorney or law firm for any party, and (B) the inquiries the attorney made to determine whether there is any such relationship. v. The agreement shall not provide that the unclaimed funds be deposited into the Industrial Relations Unpaid Wage Fund. Cal. Lab. Code § 96.6. (Section G.3.c.i-v)	
If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by: i. A declaration from the plaintiff's attorney, stating whether bids were sought from multiple potential administrators and, if so, the results of that competitive bidding. If the parties did not select the lowest bidder, the declaration shall explain that decision. (Section G.3. d.i)	Tunyan decl., ¶ 35.
If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by:	Declaration of Lisa Mullins on behalf of ILYM GROUP, Inc. in support of Motion.

ii. A declaration from the administrator describing: A. The administrator's experience; B. The fee to be charged by the administrator to perform the services described in the settlement agreement and proposed order; C. Whether that fee is (1) fixed, (2) hourly, or (3) hourly with a cap; and D. How the fee was calculated. (Section G.3. d.ii)	
Any release to be given by the participating class members (other than the class representatives) shall be limited to: i. The defendants named in the complaint, together with their officers, directors, employees and agents. If any other parties are sought to be released, the motion shall both (A) identify those other parties by name and (B) explain the facts that justify their inclusion. ii. The claims stated in the complaint and those based solely upon the facts alleged in the complaint. iii. Liability that arose during the class period as defined by the settlement agreement. (Section G.3.e.i-iii)	Settlement Agreement, ¶ 37.; Motion ¶ 2:22-24.
iv. Any release of claims for PAGA penalties shall bind only the named plaintiff and the State of California and shall release only those claims described in the notice sent by plaintiff to the LWDA, and only to the extent that they are alleged in the complaint. An example of an acceptable release is as follows: "Plaintiff releases all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release any aggrieved employee's claim for wages or damages." (Section G.3.e.iv)	Settlement Agreement, ¶¶ 15 and 37(c)(2)); Motion ¶ 2:25-28.
If notice is not to be given by first class mail to addresses believed to be current, the	Motion ¶¶ 20:28; 21: 1-19; Settlement Agreement, ¶ 32.

1	motion shall discuss the proposed method of	
2	giving notice, the alternative methods	
3	considered, and the reasons that the proposed	
4	method is the one most likely to give	
5	actual notice to the greatest number of class	
6	members. (Section G.3.f.)	
7	If the settlement requires any of the class	Not applicable as the settlement does not require
8	members to submit claims, the motion	claim submission.
9	shall explain why a claim process is reasonably	
10	necessary. If the defendant knows	
11	(A) the identity of the class members, (B) their	
12	addresses or former addresses, and	
13	(C) the facts necessary to calculate the	
14	recovery of each class member, the Court	
15	will require a strong showing of necessity for a	
16	claims process. (Section G.3.g.)	
17	If the settlement provides that any portion of	Not applicable as the settlement provides the
18	the consideration paid or deposited by	settlement is non-reversionary.
19	the defendant may revert to the defendant, the	
20	motion shall explain (i) the	
21	circumstances under which that reversion	
22	would occur, (ii) the maximum amount of	
23	any reversion, and (iii) why that reversion is	
24	fair. (Section G.3.h.)	
25	If the settlement includes compensation for	Motion ¶ 3:14-16; Settlement, ¶ 26(h)
26	unpaid wages, the motion shall describe	
27	how the employer's share of any applicable	
28	payroll taxes will be handled. The	
29	Court suggests that the employer's share not be	
30	paid out of the gross settlement	
31	fund. The Court is not likely to include the	
32	amount of those payments when	
33	calculating the plaintiffs counsel's percentage	
34	attorney's fee. (Section G.3.i.)	
35	The motion shall describe how individual	Motion ¶ 3:11-13; Settlement, ¶ 26(k)
36	settlement payments will be allocated for	
37	tax purposes among wages, interest and non-	
38	PAGA penalties and how such	
39	allocation was determined. Payments to	
40	aggrieved employees pursuant to the	
41	settlement of any PAGA claim should be	
42	addressed separately and allocated solely	
43	as penalties. The 25% portion of PAGA	
44	penalties payable to aggrieved employees	
45	should not be included as part of the net	
46	settlement amount. (Section G.3.j.)	

1 2 3 4 5 6 7	The documents that will be read by or used by the class members - the proposed notice, objection form, exclusion form, and any claim form - shall be drafted in a manner that is likely to be readily understood by the members of the class. In particular, they shall not contain any Latin terms (such as et al. and et seq.), any legal terms of art (such as nonexempt and class certification), or any unfamiliar symbols or abbreviations (such as §, LLC, and IWO). (Section G.3.k.i.)	Proposed Order ¶ 12, Exhibits 1, 2, 3.
8 9 10 11 12	To assist the Court in determining whether those documents comply with that directive, the motion shall be supported by a declaration of the defendant on personal knowledge concerning the likely age, education, and experience of the class members, and of their ability to read and comprehend English. (Section G.3.k.ii.)	Declaration of Victoria Lee in support of Motion ¶¶ 2-3.
13 14 15 16 17	The motion shall be accompanied by a separate proposed order which shall include, as attachments to the order, the proposed notice (Cal. Rules of Court, rule 3.769(e)), proposed exclusion form, proposed objection form, any proposed claim form, and any other form that is proposed to accompany the notice. (Section G.4. a.)	Proposed Order ¶12.
18	The settlement agreement shall not be attached to the order. (Section G.4. b.)	The settlement agreement is not attached to the Proposed Order.
19 20 21 22	Counsel shall carefully review both the terms and the terminology of the order and accompanying forms (notice, objection form, exclusion form, and any claim form) to confirm that the various documents are internally consistent, consistent with each other, and consistent with the settlement agreement. (Section G.4. c.)	The terms are consistent in all documents.
23 24 25 26	The order shall state the name of any settlement administrator, and shall describe the nature of the services that the administrator will be required to perform, either directly or by reference to the settlement agreement. (Section G.4. d.)	Proposed Order ¶10.
27 28	The order shall provide that the notice shall be accompanied by an exclusion form	Proposed Order ¶¶12, 13, 18.

that the class members may use. The order shall provide that any exclusion form shall be submitted to the settlement administrator rather than filed with the court. The order shall not require the class member to send copies of the exclusion form to counsel, but may require the settlement administrator to do so. The order shall provide that the settlement administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every exclusion form received by the administrator. (Section G.4. e.)	
The proposed order shall provide that the notice shall be accompanied by an objection form that the class members may use. The order shall provide that any objection shall be submitted to the settlement administrator rather than filed with the court. The order shall not require the class member to send copies of the objection form to counsel, but may require the settlement administrator to do so. The order shall provide that the settlement administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every objection form received by the administrator. (Section G.4. f.)	Proposed Order ¶¶12, 16, 18.
Neither the order, the notice, nor the objection form shall require an objecting party to do either of the following, either personally or through counsel: i. To appear at the hearing on the motion for final approval for that party's objection to be considered. ii. To file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval. (Section G.4. g.)	None of these requirements are provided in the Proposed Order or the notice.
The order shall provide a proposed date for the Final Approval Hearing. The order shall require that either counsel or the administrator must give notice to any objecting party of any continuance of the hearing of the motion for final approval. (Section G.4.h.)	Proposed Order ¶¶17, 22.

Neither the order nor the notice shall purport to enjoin the class members from filing any actions or administrative claims or proceedings pending the final hearing on the settlement, or for any other period. (Section G.4.i.)	Neither notice nor proposed order provide this requirement.
If notice is to be given by mail, and if the class members will be required to submit a claim form, the order shall provide: i. That the notice be accompanied by a stamped envelope addressed to the claims administrator; and ii. That the claims administrator be required to send a reminder notice to every class member from whom no claim or exclusion request is received within 30 days of mailing the notice. (Section G.4.j.)	Not applicable as no claim form is required.

Respectfully submitted,

Dated: April 29, 2024

TUNYAN LAW, APC

By: 
Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff SCOTT ALLEN ATHEY

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 535 N. Brand Blvd., Suite 285
Glendale, California 91203. On April 29, 2024, I served the foregoing document described as:

7 On the date indicated below, I served the document described as: **PLAINTIFF'S COMPLIANCE**
8 **CHART IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF**
9 **CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in
this action by sending a true copy thereof to interested parties as follows and as stated on the attached
service list:

10 Richard D. Marca
Richard.Marca@varnerbrandt.com
11 Alisha Maline
Alisha.Maline@varnerbrandt.com
12 Madison Montgomery
Madison.Montgomery@varnerbrandt.com
13 Daisy Diaz
Daisy.Diaz@varnerbrandt.com
14 Christine A. Mitchell
Christine.Mitchell@varnerbrandt.com
15 **VARNER & BRANDT LLP**
16 3750 University Avenue, Floor 6
17 Riverside, CA 92501
Telephone: (951) 274 -7777
Facsimile: (951) 274- 7770

18 ***Attorneys for Defendant Walker Evans Enterprises***

19 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California,
20 by e-mail delivery on the parties listed herein at their most recent known e-mail address
or e-mail of record in this action.

21 [✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
22 service, I caused the documents to be sent to the persons at the electronic service addresses listed
above via electronic mail. I did not receive an error message.

23 I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct. Executed on April 29, 2024 at Glendale, California.

25
26 Lilit Tunyan
Name



Signature