

1 **AEGIS LAW FIRM, PC**
Kashif Haque (State Bar No. 218672)
2 Samuel A. Wong (State Bar No. 217104)
Jessica L. Campbell (State Bar No. 280626)
3 9811 Irvine Center Drive, Suite 100
Irvine, California 92618-2902
4 Telephone: (949) 379-6250
Facsimile: (949) 379-6251

5 Attorneys for Plaintiff CHRISTIAN PEREZ

6 **VORYS, SATER, SEYMOUR & PEASE LLP**
7 Robert A. Harris (Ohio Bar No. 0059549) (admitted *Pro Hac Vice*)
52 East Gay Street
8 Columbus, Ohio 43215
Telephone: (614) 464-6400
9 Facsimile: (614) 464-6350

10 **HAIGHT, BROWN & BONESTEEL LLP**
Yvette Davis (State Bar No. 165777)
11 2050 Main Street, Suite 600
Irvine, California 92614
12 Telephone: (714) 426-4607
Facsimile: (714) 754-0826

13 Attorneys for Defendant WEST COAST
14 LIQUIDATORS, INC. dba Big Lots, a
California corporation

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN BERNARDINO**

17 CHRISTIAN PEREZ, individually and on
18 behalf of all others similarly situated, and
on behalf of the general public,

19 Plaintiffs,

20 v.

21 WEST COAST LIQUIDATORS, INC. dba
22 Big Lots, a California corporation; and
DOES 1 through 20, inclusive,

23 Defendants.

Case No. CIV DS1417863

CLASS ACTION

Assigned for all Purposes to:
Hon. John M. Pacheco
Department: S31

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

Action Filed: December 1, 2014
Trial Date: None Set

24
25
26 **BY FAX**
27
28

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 1 9 2016

BY Suzanne M. Serrano
SUZANNE M. SERRANO, DEPUTY

1 The Motion of Plaintiff Christian Perez (“Plaintiff”) for final approval of the class action
2 settlement reached with Defendant West Coast Liquidators, Inc. (the “Motion”), which was
3 preliminarily approved by the Court on August 8, 2016, came regularly on for hearing on December
4 12, 2016.

5 WHEREAS Plaintiff and Defendant West Coast Liquidators, Inc. (“Defendant”) entered into
6 a Stipulation of Settlement and Release (the “Settlement Agreement”), on or about June 29, 2016, to
7 settle this class action lawsuit (the “Class Action”);

8 WHEREAS the Court entered an Order dated August 8, 2016 (the “Preliminary Approval
9 Order”), preliminarily approving the settlement of the Class Action (the “Settlement”), consistent with
10 California Code of Civil Procedure § 382 and California Rule of Court 3.769, ordering notice be sent
11 to Class Members, scheduling a Final Hearing for December 12, 2016, and providing Class Members
12 with an opportunity to object to the Settlement or exclude themselves from the Class;

13 WHEREAS the Court held a Final Hearing on December 12, 2016 to determine whether to
14 give final approval to the Settlement; and

15 WHEREAS the Court makes the following combined Findings of Fact and Conclusions of
16 Law in support of approval of the Settlement;

17 NOW, THEREFORE, based on the submissions of the Parties, upon reviewing all prior
18 proceedings, and on the evidence adduced at the Final Hearing, it is hereby ORDERED, ADJUDGED,
19 AND DECREED as follows:

20 1. Incorporation of Other Documents. This Order (the “Final Approval Order”)
21 incorporates the Settlement Agreement. Unless otherwise provided herein, all capitalized terms in this
22 Final Approval Order shall have the same meaning as set forth in the Settlement Agreement, with the
23 exception that “Plaintiff” and “Named Plaintiff” shall both refer to Plaintiff Christian Perez.

24 2. Jurisdiction. Because adequate notice has been disseminated, and all Class Members
25 have been given the opportunity to request exclusion from the Class, the Court has personal
26 jurisdiction with respect to the claims of all Eligible Class Members. The Court has subject matter
27 jurisdiction over the Class Action, including jurisdiction to approve the Settlement, grant final
28

1 certification of the Class, and dismiss the Class Action.

2 3. Final Class Certification. The Court finds that the Class satisfies all applicable
3 requirements of California Code of Civil Procedure § 382, California Rule of Court 3.769, and due
4 process. Accordingly, the Court certifies, for settlement purposes only, a class consisting of all non-
5 exempt hourly employees employed at Defendant's Rancho Cucamonga Distribution Center from
6 March 6, 2012 through June 9, 2016. Excluded from the Class is the one individual who returned
7 signed and valid Opt-Out Requests upon receiving the Class Notice and Claim Form. For purposes of
8 this Order, "Settling Plaintiffs" means all Class Members who have not timely opted out of the Class.

9 4. Adequacy of Representation. As Class Counsel, Kashif Haque, Samuel A. Wong, and
10 Jessica L. Campbell of Aegis Law Firm, PC have fully and adequately represented the Class for
11 purposes of entering into and implementing the Settlement, and have satisfied the requirements of
12 California Code of Civil Procedure § 382.

13 5. Class Notice. The Court finds that the Class Notice and its distribution to Class
14 Members have been implemented pursuant to the Settlement Agreement and this Court's Preliminary
15 Approval Order and that they:

- 16 a. constitute the best practicable notice to Class Members under the circumstances
17 of the Class Action;
- 18 b. constitute notice that was reasonably calculated, under the circumstances, to
19 apprise Class Members of: (i) the pendency of the Class Action; (ii) the material terms and provisions
20 of the Settlement and their rights under the Settlement; (iii) their right to object to any aspect of the
21 proposed Settlement (including final certification of the Class, the fairness, reasonableness and
22 adequacy of the Settlement, the adequacy of the Class's representation by Plaintiff and Class Counsel,
23 and/or the award of the Enhancement Payment, attorneys' fees, and litigation costs); (iv) their right to
24 exclude themselves from the Class and the Settlement; (v) their right to claims for Settlement Awards;
25 (vi) their right to appear at the final fairness hearing, either on their own behalf or through counsel
26 hired at their own expense, if they did not exclude themselves from the Class; and (vii) the binding
27 effect of the orders and judgment in the Class Action, whether favorable or unfavorable, on all Eligible
28

1 Class Members;

2 c. constitute notice that was reasonable, adequate, and sufficient to all Class
3 Members; and

4 d. constitute notice that fully satisfied the requirements of California Code of Civil
5 Procedure § 382, California Rule of Court 3.769, and due process.

6 6. Final Settlement Approval. The terms and provisions of the Settlement Agreement
7 have been entered into in good faith, and are the product of arms-length negotiations by experienced
8 counsel who have done a meaningful investigation of the claims in the dispute. The Settlement
9 Agreement and all of its terms and provisions are fully and finally approved as fair, reasonable,
10 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
11 Settlement Agreement according to its terms and provisions.

12 7. Binding Effect. The terms and provisions of the Settlement Agreement, this Final
13 Approval Order, and the accompanying Final Judgment are binding on the Settling Plaintiffs, as well
14 as their heirs, executors and administrators, successors, and assigns, and those terms shall have res
15 judicata and other preclusive effect in all pending and future claims, lawsuits or other proceedings
16 maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other
17 proceedings involve matters that were or could have been raised in the Class Action and are
18 encompassed by the release of the Settled Claims with respect to Eligible Class Members other than
19 Plaintiff, as set forth in the Settlement Agreement. This Settlement will have no binding effect upon,
20 and provide no res judicata preclusion to, those Class Members who have submitted Opt-out Requests.

21 8. Releases. The Settling Plaintiffs shall be bound by the release of the Settled Claims
22 with respect to Eligible Class Members other than Plaintiff, as provided in the Settlement Agreement,
23 regardless of whether such persons received any compensation under the Settlement Agreement. The
24 release of the Settled Claims with respect to Eligible Class Members other than Plaintiff is effective
25 as of the date of this Final Approval Order and the accompanying Final Judgment. The Court expressly
26 adopts all defined terms in the Settlement Agreement and the release of Settled Claims with respect to
27 each Eligible Class Member other than Plaintiff, including without limitation, the following definition
28

1 of Settled Claims with respect to each Eligible Class Member other than Plaintiff (which is set forth
2 at paragraph 30 of the Settlement Agreement):

3 any and all claims, demands, rights, liabilities, penalties (including waiting time
4 penalties), restitution, liquidated damages, causes of action, and other legal
5 responsibilities, of any form whatsoever, arising before the date of the Preliminary
6 Approval Order, whether based upon federal, state, local, constitutional, statutory, or
7 common law, or any other law, rule, or regulation, whether known or unknown,
8 unforeseen, unanticipated, unsuspected, or latent, that have been or could have been
9 asserted by Named Plaintiff or a successor or assign of Named Plaintiff, whether
10 directly, indirectly, representatively, derivatively, or in any other capacity, against any
11 of the Released Parties, arising out of or related to the allegations set forth in the First
12 Amended Complaint, including without limitation: (a) violation of California Labor
13 Code §§ 1194, 1194.2, and 1197, as well as applicable IWC Wage Order § 3, based on
14 failure to pay minimum wages; (b) violation of California Labor Code §§ 510, 1194,
15 and 1198, as well as applicable IWC Wage Order § 3, based on failure to pay overtime
16 wages; (c) violation of California Labor Code §§ 226.7 and 512, and applicable IWC
17 Wage Order § 11, based on failure to provide meal periods; (d) violation of California
18 Labor Code § 226.7 and applicable IWC Wage Order § 12, based on failure to provide
19 rest breaks; (e) violation of California Labor Code § 226, based on failure to provide
20 accurate itemized wage statements; (f) violation of California Labor Code §§ 1174 and
21 1174.5 and applicable IWC Wage Order § 7, based on failure to maintain records; (g)
22 violation of California Labor Code §§ 201, 202, and 203, based on failure to pay wages
23 upon termination or within required time thereof; (h) all penalties provided in the
24 California Labor Code that are associated with the claims and factual allegations as
25 above in items (a)-(g); (i) all penalties associated with California Labor Code §§ 558,
26 and 2698, *et seq.* ("PAGA") arising from the claims and factual allegations as above in
27 items (a)-(g), including California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7,
28 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198; and (j) violation of Business
& Professions Code § 17200, *et seq.* for restitution from the same factual allegations
as above in items (a)-(g). The Settled Claims do not include any claims related to any
time period any Class Member was: (a) performing services for any of the Released
Parties as a person classified by Released Parties as exempt from overtime; and/or (b)
performing work outside of California.

19 9. Permanent Injunction. The Settling Plaintiffs are barred and enjoined from: (a) filing,
20 commencing, prosecuting, maintaining, intervening in, participating in (as class members or
21 otherwise), or receiving any benefits or other relief from, any other claim, lawsuit, arbitration, or
22 administrative, regulatory, or other proceeding or order in any jurisdiction based on the release of
23 Settled Claims with respect to each Eligible Class Member other than Named Plaintiff; and (b)
24 organizing or soliciting the participation of any Class Members into a separate class for purposes of
25 pursuing as a purported class action (including by seeking to amend a pending complaint to include
26 class allegations, or by seeking class certification in a pending action) any claim, lawsuit or other
27 proceeding based on the release of Settled Claims with respect to each Eligible Class Member other
28

1 than Named Plaintiff. The Court finds that issuance of this permanent injunction is necessary and
2 appropriate in aid of the Court's jurisdiction over the Class Action and to protect and effectuate the
3 Court's Final Approval Order and Final Judgment.

4 10. Enforcement of Settlement. Nothing in this Final Approval Order or the accompanying
5 Final Judgment shall preclude any action to enforce the terms and provisions of the Settlement
6 Agreement.

7 11. Attorneys' Fees and Costs. Class Counsel is hereby awarded attorneys' fees of
8 \$300,000. Class Counsel is hereby awarded reimbursement of actual litigation costs in the amount of
9 \$21,029.02. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the
10 Settlement Agreement. Defendant shall not be required to pay for any other attorneys' fees and
11 expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing the
12 Plaintiff or Class Members, or incurred by the Plaintiff or Class Members, in connection with or related
13 in any manner to the Class Action, the Settlement, the administration of the Settlement, and/or the
14 Settled Claims with respect to each Eligible Class Member other than Plaintiff.

15 12. Enhancement Payment. The Court finds that an Enhancement Payment in the amount
16 of Eight Thousand Five Hundred U.S. Dollars (\$8,500.00), to be paid out of the Gross Settlement
17 Funds by Defendant to Plaintiff on account of his service and assistance to the Class in the Class
18 Action, is reasonable and appropriate. The Enhancement Payment is to be paid pursuant to the terms
19 and provisions set forth in the Settlement Agreement.

20 13. Claims Administration Costs. The Court finds that Claims Administration Costs in the
21 amount of \$14,000 to be paid by Defendant to the Claims Administrator is reasonable and appropriate.
22 Settlement Administration Costs are to be paid pursuant to terms and provisions set forth in the
23 Settlement Agreement.

24 14. PAGA Payment. The Court finds that the PAGA Payment of Three Thousand U.S.
25 Dollars (\$3,000.00), Two Thousand Two Hundred Fifty Dollars (\$2,250.00) of which is to be paid by
26 Defendant to the California Labor & Workforce Development Agency is reasonable and appropriate
27 and the remaining Seven Hundred Fifty U.S. Dollars (\$750.00) to be a part of the Net Settlement
28

1 Funds. The PAGA Payment is to be paid pursuant to the conditions set forth in the Settlement
2 Agreement.

3 15. Modification of Settlement Agreement. The Parties are hereby authorized, upon
4 approval of the Court, to agree to and adopt amendments to or modifications of the Settlement
5 Agreement, by a written instrument signed by counsel for all Parties or their successors-in-interest.
6 Such amendments or modifications shall be consistent with this Final Approval Order and cannot limit
7 the rights of Settling Plaintiffs under the Settlement Agreement.

8 16. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Approval Order
9 and the accompanying Final Judgment. This Court expressly retains jurisdiction for the
10 administration, interpretation, effectuation, and/or enforcement of the Settlement Agreement and of
11 this Final Approval Order and the accompanying Final Judgment, and for any other necessary purpose,
12 including, without limitation:

13 a. enforcing the terms and provisions of the Settlement Agreement and resolving
14 any disputes, claims, or causes of action in the Class Action that, in whole or in part, are related to or
15 arise out of the Settlement Agreement, this Final Approval Order or the accompanying Final
16 Judgment;

17 b. entering such additional Orders as may be necessary or appropriate to protect
18 or effectuate the Court's Final Approval Order and the Final Judgment approving the Settlement
19 Agreement, and permanently enjoining Settling Plaintiffs from initiating or pursuing related
20 proceedings, or to ensure the fair and orderly administration of this Settlement; and

21 c. entering any other necessary or appropriate Orders to protect and effectuate this
22 Court's retention of continuing jurisdiction.

23 17. No Admissions. Neither this Final Approval Order and the accompanying Final
24 Judgment, nor the Settlement Agreement (nor any other document referred to here, nor any action
25 taken to carry out this Final Approval Order and the Final Judgment) is, may be construed as, or may
26 be used as an admission or concession by or against Defendant of the validity of any claim or any
27 actual or potential fault, wrongdoing, or liability. Entering into or carrying out the Settlement
28

1 Agreement, and any negotiations or proceedings related to it, shall not be construed as or deemed to
2 be evidence of, an admission or concession as to Defendant's denials or defenses. Further, entering
3 into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall
4 not be offered or received in evidence in any action or proceeding against any party hereto in any
5 court, administrative agency, or other tribunal for any purpose whatsoever, except as evidence of the
6 Settlement or to enforce the terms and provisions of the Settlement Agreement, or this Final Approval
7 Order and accompanying Final Judgment. However, the Settlement Agreement, and/or Final
8 Approval Order and the accompanying Final Judgment may be filed by Defendant in any action to
9 support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment
10 bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or
11 similar defense or counterclaim.

12
13 DATE: DEC 12 2016

JOHN M. PACHECO
JUDGE JOHN M. PACHECO

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28