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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SERGIO PERALTA, Individually  
and on Behalf of Other Members of  
the Public Similarly Situated,

Plaintiff,

v.

LQ MANAGEMENT L.L.C. d/b/a  
HVM/LQ MANAGEMENT L.L.C.,  
and HVM/LQ MANAGEMENT  
L.L.C.,

Defendants.

Case No. 3:14-CV-01027-DMS-JLB

**CLASS ACTION**

**REPRESENTATIVE ACTION**

**ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Judge: Hon. Dana M. Sabraw  
Courtroom: 13A  
Hearing Date: July 17, 2015  
Hearing Time: 1:30 p.m.

Action Filed: January 28, 2014  
Action Removed: April 23, 2014

1 In this putative class action alleging violation of California wages and hours laws,  
2 Plaintiff filed a motion for preliminary approval of class action settlement. Plaintiff  
3 requests certification of two settlement classes, preliminary approval of the class action  
4 settlement agreement, and approval of the proposed notice to the class members. On April  
5 30, 2015, the motion was denied without prejudice to refile the motion with additional  
6 information. For the reasons stated below, Plaintiff's unopposed renewed motion is  
7 granted.

8 In this Lawsuit<sup>1</sup> Plaintiff alleges, on behalf of a Pay Stub Class, failure to provide  
9 accurate itemized wage statements in violation of California Labor Code section 226(a).  
10 Plaintiff also alleges, on behalf of a Non-Exempt Class, the failure to provide meal  
11 periods, authorize and permit rest breaks, and pay break premium wages at the correct  
12 regular rate of compensation. The same claims were also brought under the California  
13 Labor Code Private Attorneys General Act of 2004, Cal. Labor Code § 2698 *et seq.*  
14 Plaintiff seeks on his own behalf and on behalf of similarly situated individuals statutory  
15 penalties, civil penalties, attorneys' fees and costs, and, for the Non-Exempt Class, also  
16 wages and pre-judgment interest. The action was removed from state court under the  
17 Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d).

18 After investigating the claims and engaging in discovery and disclosures, the  
19 Parties reached a Settlement in private mediation. Accordingly, Plaintiff filed the pending  
20 Renewed Unopposed Motion for Preliminary Approval of Class Action Settlement in  
21 accordance with the Stipulation, which, together with the attached exhibits, sets forth the  
22 terms and conditions for a Settlement of the Lawsuit. Defendant does not oppose the  
23 requested relief.

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27 <sup>1</sup> This Order incorporates by reference the definitions in the Stipulation for Class Action  
28 Settlement ("Stipulation"), and all terms defined therein shall have the same meaning in  
this Order as set forth in the Stipulation.

1 Having read and considered Plaintiff's motion, including the Settlement with  
2 attached exhibits, Plaintiff's Renewed Unopposed Motion for Preliminary Approval of  
3 Class Action Settlement is GRANTED as follows:

4 1. Two Classes are conditionally certified for Settlement purposes only:

5 All Hourly Employees (i.e., hourly employees classified as non-exempt) employed  
6 by La Quinta in California at any time during the Class Period of June 21, 2012  
7 through the Date of Preliminary Approval ("Non-Exempt Class"); and

8 All Hourly Employees and Non-Hourly Employees (persons classified as exempt  
9 employees) employed by La Quinta in California at any time during the Class  
10 Period of January 28, 2013 and the Date of Preliminary Approval ("Pay Stub  
11 Class").

12 2. Although the fact of settlement is relevant to the class certification analysis,  
13 certification must nonetheless meet the requirements of Federal Rule of Civil Procedure  
14 23(a) and (b)(3), which demand heightened attention in the settlement context. *Amchem*  
15 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997), *see also id.* at 620-27. The Lawsuit  
16 meets these requirements. The Classes are sufficiently numerous, as the Non-Exempt  
17 Class is approximated to contain more than 1,189 putative class members and the Pay  
18 Stub Class is approximated to contain more than 1,087 putative members. The Lawsuit is  
19 based on the allegations that Defendant failed to include the requisite information on the  
20 wage statements for Pay Stub Class members, and for Non-Exempt Class members failed  
21 to provide compliant breaks and pay break premium payments at the required regular rate  
22 of compensation. Plaintiff's theory of the case for the Pay Stub Class is that: (i) through  
23 February 21, 2014, (a) all wage statements failed to include the pay period begin date for  
24 all Pay Stub Class members regardless of status as a Hourly Employee or Non-Hourly  
25 Employee and (b) all wage statements failed to include the applicable rate of pay, and  
26 failed to separate hours worked from hours paid for Hourly Employees in the Pay Stub  
27 Class; and (ii) after February 21, 2014, wage statements that contained wage adjustments  
28 did not contain required information concerning the adjustment (i.e., the inclusive dates  
of the pay period for the adjustment, applicable rates of pay, and/or the hours worked).  
Plaintiff's theory of the case for the Non-Exempt Class is that meal and rest breaks were

1 not provided in compliance with California law and that break premium payments under  
2 California Labor Code section 226.7(c) were not paid at the correct regular rate of  
3 compensation as the calculation for the payments do not include non-base pay such as  
4 incentive pay. Accordingly, the legal and factual issues presented for the Pay Stub and  
5 Non-Exempt Classes are sufficiently uniform for each class to meet the commonality and  
6 predominance requirements. Based on the allegations in the operative Second Amended  
7 Complaint, Plaintiff's claims are sufficiently typical of the Pay Stub Class and the Non-  
8 Exempt Class members' claims to meet the typicality requirement. Plaintiff and his  
9 counsel have demonstrated that they can adequately represent the absent Class Members.  
10 Finally, the Court finds that maintenance of this Lawsuit as a class action is superior to  
11 individual litigation for purposes of settlement.

12 3. Plaintiff Sergio Peralta is appointed as Class Representative and his counsel,  
13 Matthew Dente, Brian Robbins, and Diane Richard are appointed as counsel for both  
14 Classes ("Class Counsel") pursuant to Rule 23(g). Class Counsel is authorized to act on  
15 behalf of Class Members with respect to the acts or consents under the Settlement, and  
16 such other acts reasonably necessary to consummate the Settlement. Any Class Member  
17 may enter an appearance through counsel of his or her choosing at his or her own expense.  
18 Any Class Member who does not enter an appearance through counsel or appear on his or  
19 her own behalf will be represented by Class Counsel.

20 4. When balanced against the cost and uncertainty associated with further litigation  
21 of liability and damages, the Court preliminarily approves the Settlement as fair,  
22 reasonable, and adequate under Rule 23(e).

23 5. Phoenix Settlement Administrators is appointed as Claims Administrator. The  
24 Claims Administrator shall comply with its duties as set forth in the Settlement and in this  
25 Order, including sending the Notice Packet to the Classes by first class mail.

26 6. The Court approves the Notice Packet attached as Exhibits A and B to the  
27 Stipulation, on condition that the changes indicated below be made to the Notice and  
28 Settlement Allocation Form.

1 The following changes shall be made to the Notice:<sup>2</sup>

- 2 A. The beginning of the second sentence in the first paragraph of section  
3 6 shall read: “Plaintiff’s Lawsuit is styled as both a ~~putative~~ potential  
4 class action case as well as ... .”
- 5 B. Item (3) in the last paragraph of section 6 appears to be missing text  
6 and shall be revised accordingly.
- 7 C. The second sentence of section 13 shall begin with “Unless otherwise  
8 ordered by the Court, any request for exclusion ... .”
- 9 D. The first sentence of section 15 shall read: “If you wish to object, you  
10 should do so in writing.”
- 11 E. Item (b) of section 15 shall read: “include your name, address, dates of  
12 employment with La Quinta, and last four digits of your social security  
13 number; ~~and the factual and legal basis for the objection;~~”
- 14 F. The word “must” in the first, second and fourth sentences of section  
15 16 shall be replaced with “should.” The fourth sentence shall read: “To  
16 do so, you or your attorney should ~~must~~ file an Entry Notice of  
17 Appearance with the Clerk ... .”
- 18 G. The second to the last sentence of section 17 shall read in pertinent  
19 part: “... in the manner provided above will ~~shall~~ be deemed to have  
20 waived such objections and ~~shall~~ be foreclosed from making ... .”
- 21 H. The phrase “computed as follows:” at the end of the first sentence in  
22 the second paragraph of section 20 appears to be superfluous or there  
23 is text missing to introduce it. Accordingly, the phrase shall either be  
24 removed or explanatory language shall be added.
- 25 I. The last word of section 21 ,.. “lawyers,” shall be replaced with “Class  
26 Counsel.”

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28 <sup>2</sup> Added text is marked by underlining, and omitted text is marked by strikeouts.

1 J. In pertinent part, the first sentence of section 22 shall read "... brought  
2 or that could have been ~~asserted~~ brought ...". Missing punctuation  
3 shall be inserted between the first and second sentences of the section.

4 The following change shall be made to both versions of the Settlement  
5 Allocation Form: The last sentence of the first paragraph of the "Challenge"  
6 section of the form shall read in pertinent part: "I understand that, unless  
7 ordered otherwise by the Court, such determination is final ... ."

8 7. The Court finds that the distribution of the Notice Packet substantially in the  
9 manner and form set forth in the Stipulation and this Order satisfies due process  
10 requirements and the requirements of Rule 23(c)(2) and (e)(1), is the best notice  
11 practicable under the circumstances, and shall constitute due and sufficient notice to all  
12 Class Members.

13 8. The Final Approval Hearing shall be held before this Court on **November 6,**  
14 **2015**, at **1:30 p.m.** in Courtroom 13A of the United States District Court for the Southern  
15 District of California, located at 333 West Broadway, San Diego California 92101, to  
16 determine all necessary matters concerning the Settlement, including: whether the  
17 proposed Settlement is fair, adequate, and reasonable; whether the Settlement should be  
18 finally approved by the Court; whether the plan of allocation contained in the Settlement  
19 should be approved as fair, adequate, and reasonable; whether to grant the motion for  
20 attorneys' fees and costs payment and the Class Representative Enhancement Service  
21 Award; and whether a Final Judgment should be entered.

22 9. Any Class Member may choose to opt out of and be excluded from the Class as  
23 provided in the Notice of Class Action Settlement by following the instructions set forth  
24 therein. Any Class Member who chooses to opt out of and be excluded from the Class  
25 will not be entitled to any recovery under the Settlement and will not be bound by the  
26 Settlement or have any right to object to the Settlement or appeal the Final Judgment. Any  
27 request to opt out must be in writing signed by the Class Member seeking to opt out.  
28 Individuals in the Classes who have not requested exclusion shall be bound by all

1 determinations of the Court, the Settlement, and any Final Judgment that may be entered  
2 thereon.

3 10. No later than October 23, 2015 Plaintiff shall file his motion for final approval  
4 of the Settlement. In addition to the required and customary filings, the motion papers  
5 shall include (i) an affidavit evidencing Defendant's compliance with the CAFA notice  
6 requirement under 28 U.S.C. § 1715, including responses from any government officials  
7 to the Notice of Class Action Settlement; and (ii) the Claims Administrator's affidavit  
8 regarding compliance with its duties under the Settlement and this Order, a copy of the  
9 Notice Packet sent to the Classes, a report on the number of Class Members to whom the  
10 Notice Packet was sent, the number of undelivered Notice Packets, efforts to locate correct  
11 addresses for undelivered Notice Packets after the first mailing, number of Notice Packets  
12 sent to the updated addresses in a second mailing, the number of such Notice Packets  
13 returned undelivered, the number of Class Members seeking exclusion (including  
14 untimely requests), the number of Eligible Participating Class Members in each Class to  
15 whom payment will be made, and the average Eligible Participating Class Member  
16 payment in each Class.

17 11. Any Participating Class Member may appear at the Final Approval Hearing  
18 and object to the Settlement ("Objectors"). As provided in the Notice of Class Action  
19 Settlement, Objectors may present evidence and file briefs relevant to the issues to be  
20 heard and determined by the Court. No later than forty-five (45) days after the date of  
21 mailing of the Notice Packets, Objectors shall serve their briefs, if any, together with a  
22 verification of their membership in the Class, by hand or by first class mail upon Class  
23 Counsel and Defendant, and file them with the Clerk of this Court.

24 12. As of the date this Order is signed, all dates and deadlines associated with the  
25 Lawsuit shall be stayed, other than those related to the administration of the Settlement.

26 13. If the Settlement does not become effective in accordance with its terms,  
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1 or the Settlement is not finally approved, or is terminated, canceled, or fails to become  
2 effective for any reason, this Order shall be vacated upon an appropriate motion filed no  
3 later than fourteen calendar days after the triggering event.

4 14. The Court reserves the right to adjourn or continue the date of the Final  
5 Approval Hearing and all dates provided for in the Settlement without further notice to  
6 Class Members, and retains jurisdiction to consider all further applications arising out of  
7 or connected with the proposed Settlement.

8 15. The Court retains exclusive jurisdiction over the Lawsuit to consider all further  
9 matters arising out of or connected with the Settlement.

10 16. In accordance with the Settlement, the Court adopts the following dates:

11 July 31, 2015	Deadline for Defendant to provide Claims Administrator with Class List.
12 August 6, 2015	Deadline for Claims Administrator to provide Class Counsel with a modified Class List.
13 August 10, 2015	Deadline for Claims Administrator to Mail Notice Packets to Class Members.
14 August 10, 2015	Deadline for Claims Administrator to Mail Notice Packets to Class Members.
15 September 7, 2015	Last day for Class Counsel to file Motion for attorneys' fee and cost award.
16 September 7, 2015	Last day for Class Counsel to file Motion for attorneys' fee and cost award.
17 September 24, 2015	Last day for Class Members to submit any challenge to the number of pay periods specified on Settlement Allocation Form.
18 September 24, 2015	Last day for Class Members to submit written objections to the Settlement.
19 September 24, 2015	Last day for Class Members to submit written objections to the Settlement.
20 September 24, 2015	Last day for Class Members to submit Requests for Exclusions to be excluded from the Settlement.
21 September 24, 2015	Last day for Class Members to submit Requests for Exclusions to be excluded from the Settlement.
22 October 2, 2015	Last day for Claims Administrator to provide the Parties with a declaration of compliance with its obligations under the Settlement.
23 October 2, 2015	Last day for Claims Administrator to provide the Parties with a declaration of compliance with its obligations under the Settlement.
24 October 9, 2015	Last day for Class Counsel to file Motion for Final Approval of Settlement.
25 October 9, 2015	Last day for Class Counsel to file Motion for Final Approval of Settlement.
26 October 23, 2015	Last day for filing of any written opposition to motion for final approval of Settlement and/or Plaintiff's request for Attorneys' Fees and Costs, Class Representative
27 October 23, 2015	Last day for filing of any written opposition to motion for final approval of Settlement and/or Plaintiff's request for Attorneys' Fees and Costs, Class Representative
28 October 23, 2015	Last day for filing of any written opposition to motion for final approval of Settlement and/or Plaintiff's request for Attorneys' Fees and Costs, Class Representative



1		Enhancement Service Award, and payment of Claims Administration Costs.
2	October 30, 2015	Last day for filing of any replies to any opposition.
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4	November 6, 2015 at 1:30 p.m.	Final Approval Hearing.

5 IT IS SO ORDERED.

6 Dated: July 23, 2015

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HONORABLE DANA M. SABRAW  
UNITED STATES DISTRICT JUDGE

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