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7 on behalf of himself and all others similarly situated and aggrieved

FILED
Superior Court of California
County of Los Angeles

09/19/2023

David W. Slayton, Executive Officer / Clerk of Court

By: P. Herrera Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

11 ALEJANDRO FERRER, an individual and on
behalf of all others similarly situated,
12
13 Plaintiff,
14
15 v.
16 INEOS USA, LLC., a Delaware limited
liability company; TONY COCKRAM, an
17 individual; and DOES 1 through 100,
inclusive,
18
19 Defendants.

CASE NO.: 21STCV28076
[Assigned to the Hon. Elihu M. Berle in Dept.
6]

**AMENDED [~~PROPOSED~~] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY**

21 This Court, having considered the Motion of plaintiff ALEJANDRO FERRER (“Plaintiff”)
22 for Preliminary Approval of the Class and Representative Action Settlement and Provisional Class
23 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations
24 of David D. Bibiyian, Vedang J. Patel, Plaintiff, and Jodey Lawrence, the Joint Stipulation re: Class
25 Action and Representative Action Settlement (the “Settlement,” “Settlement Agreement” or
26 “Agreement”), the Notice of Proposed Class Action Settlement and Date for Final Approval Hearing
27 (“Class Notice”), and other documents submitted in support of the Motion for Preliminary Approval,
28 hereby **ORDERS, ADJUDGES AND DECREES THAT:**

1 1. The definitions set out in the Settlement Agreement are incorporated by reference
2 into this Order; all terms defined therein shall have the same meaning in this Order.

3 1. The Court certifies the following settlement class (“Settlement Class,” “Settlement Class
4 Members” or “Class Members”) for the purpose of settlement only: all persons currently or formerly
5 employed by defendants Ineos USA, LLC (“Ineos”), and Tony Cockram (“Mr. Cockram,”
6 collectively with Ineos, the “Defendants”) in California and classified as non-exempt, hourly-paid
7 employees who worked for Defendants at any time during the period from July 30, 2017 through
8 June 5, 2023 (“Class Period”).

9 2. The Court preliminarily appoints named plaintiff Alejandro Ferrer as Class
10 Representative, and David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law Group, P.C., as Class
11 Counsel.

12 3. The Court preliminarily approves the proposed class settlement upon the terms and
13 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
14 settlement appears to be within the range of reasonableness of settlement that could ultimately be
15 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
16 amount is fair, adequate, and reasonable as to all potential class members when balanced against the
17 probable outcome of further litigation relating to liability and damages issues. It further appears that
18 extensive and costly investigation and research has been conducted such that counsel for the parties
19 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
20 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
21 delay and risks that would be presented by the further prosecution of the Action. It further appears
22 that the settlement has been reached as the result of intensive, non-collusive and arms-length
23 negotiations utilizing an experienced third-party neutral.

24 4. The Court approves, as to form and content, the Class Notice that has been submitted
25 herewith.

26 5. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to
27 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The
28 deadline of mailing of the Class Notice is **October 16, 2023**. The Court finds that dissemination of

1 the Class Notice set forth in the Settlement Agreement complies with the requirements of law and
2 appears to be the best notice practicable under the circumstances.

3 6. The Court hereby preliminarily approves the definition and disposition of the Gross
4 Settlement Amount of \$300,000.00, which is inclusive of: attorneys' fees of up to one-third (1/3) of
5 the Gross Settlement Amount, which, if not escalated pursuant to the Settlement Agreement,
6 amounts to \$100,000.00, in addition to actual costs incurred of up to \$25,000.00; enhancement
7 award of up to \$7,500.00 to Plaintiff; and costs of settlement administration of no more than
8 \$4,795.00.

9 7. The Gross Settlement Amount expressly excludes employer taxes, which will be paid
10 separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

11 8. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
12 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
13 Administrator no later than 14 days after the Court grants final approval.

14 9. Class Member's "Workweek" shall mean any week during which a Class Member
15 worked for Defendants in a non-exempt, hourly-paid position during the Class Period in California,
16 based on hire dates, re-hire dates (as applicable) and termination dates (as applicable).

17 10. The Gross Settlement Amount is based on Defendants' representation that there are
18 no more than 7,705 Workweeks worked by Class Members during the Class Period. In the event the
19 number of Workweeks worked increases by more than 10% or 771 Workweeks worked, then the
20 Gross Settlement Amount shall be increased proportionally by the Workweeks worked in the Class
21 Period in excess of 8,476 Workweeks (7,705 Workweeks + 771 Workweeks) by the Workweek
22 Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross
23 Settlement Amount by 7,705 Workweeks. The Parties agree that the Workweek Value amounts to
24 and the settlement amounts to \$38.94 per Workweek ($\$300,000 / 7,705$ Workweeks). Thus, for
25 example, should there be 9000 Workweeks worked by Class Members in the Class Period, then the
26 Gross Settlement Amount shall be increased by $\$20,404.56$ ($(9,000$ Workweeks $- 8,476$
27 Workweeks) \times $\$38.94$ per Workweek).

28 11. The Court deems Phoenix Settlement Administrators ("Phoenix," "Settlement

1 Administrator,” or “Administrator”), the Settlement Administrator, and payment of administrative
2 costs, not to exceed \$4,795.00, out of the Gross Settlement Amount for services to be rendered by
3 Phoenix on behalf of the class.

4 12. No later than seven (7) calendar days from the Response Deadline, the Settlement
5 Administrator shall provide counsel for the Parties with a declaration attesting to the completion of
6 the notice process, including the number of attempts to obtain valid mailing addresses for and re-
7 sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests
8 for Exclusion and Objections received by the Settlement Administrator.

9 13. The Court directs Defendants to provide the Settlement Administrator with the “Class
10 Data” by October 2, 2023. Class Data means Class Member’s identifying information in
11 Defendants’ possession including the Class Member’s name, last-known mailing address, Social
12 Security number, hire dates, termination dates (as applicable) and re-hire dates (as applicable), and
13 Class Period Workweeks.

14 14. The Settlement Administrator shall perform an address search using the United States
15 Postal Service National Change of Address (“NCOA”) database and update the addresses contained
16 on the Class Data with the newly-found addresses, if any.

17 15. Within seven (7) calendar days, or soon thereafter, of receiving the Class Data from
18 Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the
19 Settlement Class Members via first-class regular U.S. Mail using the most current mailing address
20 information available.

21 16. “Response Deadline” means ~~forty-five (45)~~ ^{• 30 15 15} days after the Administrator mails
22 Notice to Class Members and shall be the last date on which Class Members may: (a) mail Requests
23 for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members
24 to whom Notice Packets are resent after having been returned undeliverable to the Settlement
25 Administrator shall have an additional fifteen (15) days beyond the Response Deadline has expired.
26 Response deadline is December 15, 2023.

27 17. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
28 must send the Administrator, by mail, a signed written Request for Exclusion not later than ¹⁵ ~~45~~ days

1 after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
2 Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
3 representative that reasonably communicates the Class Member's election to be excluded from the
4 Settlement and includes the Class Member's name, address and email address or telephone number.
5 To be valid, a Request for Exclusion must be emailed or postmarked by the Response Deadline.

6 18. Any Class Member who does not opt out of the settlement by submitting a timely
7 and valid Request for Exclusion will be bound by all terms of the Settlement, including those
8 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final
9 Approval of the Settlement is granted.

10 19. Only Participating Class Members may object to the Settlement. Participating Class
11 Members may send written objections to the Administrator by email or mail. In the alternative,
12 Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present
13 verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send
14 a written objection to the Administrator must do so not later than ¹ ~~45~~ days after the Administrator's
15 mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was
16 re-mailed. Responses to objections deadline is January 5, 2024.

17 20. Participating Class Members may (though are not required to) appear at the Final
18 Fairness and Approval hearing, either in person, virtually, or through the objector's own counsel.

19 21. If a Class Member submits both an Objection and a Request for Exclusion, the
20 Request for Exclusion will control and the Objection will be void.

21 22. All papers filed in support of final approval, including supporting documents for
22 attorneys' fees and costs, shall be filed by November ^{FF} ~~16~~, 2023.

23 23. Settlement Administrator's report deadline is January 5, 2024.

24 24. A Final Fairness and Approval Hearing shall be held with the Court on January 16,
25 2024 at 11:00 a.m. in Department 6 of the above-entitled Court to determine: (1) whether the
26 proposed settlement is fair, reasonable and adequate, and should be finally approved by the Court;
27 (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service
28 award to the Class Representative; and (4) the amount to be paid to the Settlement Administrator.

1 25. For any Class Member whose Individual Class Payment check is uncashed and
2 cancelled after the void date, the Administrator shall transmit the funds represented by such checks
3 to Legal Aid at Work (“Cy Pres Recipient”), located at 180 Montgomery Street, Suite 600, San
4 Francisco, CA 94104, for use in the County of Los Angeles, pursuant to Code of Civil Procedure
5 Section 384, subd. (b).

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IT IS SO ORDERED.



Elihu M. Berle

Dated: ~~EJFJDCGH~~ _____

Elihu M. Berle / Judge
Judge of the Superior Court

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