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Attorney for Plaintiff and the Putative Class

FILED
Superior Court of California
County of Los Angeles
10/27/2023

David W. Slayton, Executive Officer / Clerk of Court
By: _____ A. He _____ Deputy

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

JOSUE AVALOS, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

KENWOOD FLOORS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO: 21STCV29962

[Honorable Stuart M. Rice, SSC - Dept. 1]

**~~PROPOSED~~ ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL**

1 **[PROPOSED] JUDGMENT**

2 The Court issued an order dated October 27, 2023 (“Final Approval Order”), granting
3 approval of the class and representative action Settlement entered into by Plaintiff Josue Avalos
4 (“Plaintiff”), on behalf of himself and all others similarly situated, and Defendant Kenwood Floors,
5 Inc. (“Defendant”) (collectively, “the Parties”).

6 The Court preliminarily approved that this litigation could be maintained as a class action
7 for settlement purposes and, therefore, it conditionally certified the following Class (the “Class” or
8 “Settlement Class”) for settlement purposes:

9 All non-exempt employees of Defendant who worked for Defendant
10 in California during the period of time from August 13, 2017, through
11 April 10, 2022.

12 (See, Amended Settlement Agreement, ¶¶2 and 8).

13 The Class Period is August 13, 2017 through April 10, 2022. (See, Amended Settlement
14 Agreement, ¶8.

15 The court conditionally certifies for settlement purposes the portion of this settlement
16 regarding the Private Attorneys General Act (“PAGA Aggrieved Employees):

17 All nonexempt, hourly employees employed by Defendant during the period of
18 time from June 9, 2020, through April 10, 2022.

19 (See, Amended Settlement Agreement, ¶¶21 and 22).

20 “PAGA Period” means any time between June 9, 2020, through April 10, 2022. (See,
21 Amended Settlement Agreement, ¶22).

22 The Court appointed, for settlement purposes, the Law Offices of Scott E. Wheeler as
23 Class Counsel, Plaintiff as representative for the Class and Phoenix Settlement Administrators
24 (“Phoenix”), as the Settlement Administrator.

25 The Court further directed the Parties to provide notice to the Class, which informed Class
26 Members of: (a) the proposed Settlement and the Settlement’s key terms; (b) the date, time, and
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1 location of the Final Approval Hearing; (c) the right of any Class Member to object to the
2 proposed Settlement, and an explanation of the procedures to exercise that right; (d) the right of
3 any Class Member to exclude themselves from the proposed Settlement, and an explanation of the
4 procedures to exercise that right; and (e) an explanation of the procedures for Class Members to
5 participate in the proposed Settlement.
6

7 Thereafter, Plaintiff filed an unopposed Motion for Final Approval of Class Action
8 Settlement (“Motion for Final Approval”) and supporting documents. The Court, upon Notice
9 having been given in full compliance with the Preliminary Approval Order, and having considered
10 the proposed Settlement, as well as all papers filed in support of the Motion for Final Approval,
11 hereby **ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

12 1. This Court has jurisdiction over the subject matter of the action and over all
13 Parties to the action, including all members of the Settlement Class.
14

15 2. The Settlement is in all respects fair, reasonable, and adequate, and it is hereby
16 approved.
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18 3. The Settlement Class, defined as: “All non-exempt employees of Defendant who
19 worked for Defendant in California during the period of time from August 13, 2017, through April
20 10, 2022”, is certified as a Class for settlement purposes.
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22 4. The portion of the settlement regarding the Private Attorneys General Act (“PAGA
23 Aggrieved Employees), defined as: “All nonexempt, hourly employees employed by Defendant
24 during the period of time from June 9, 2020, through April 10, 2022”, is approved for settlement
25 purposes.
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27 5. The Notice provided to the Settlement Class conforms with the requirements of
28 California Code of Civil Procedure section 382, California Civil Code section 1781, California
Rules of Court 3.766 and 3.769, the California and United States Constitutions, and any other

1 applicable law, and constitutes the best notice practicable under the circumstances, by providing
2 individual notice to all Class Members who could be identified through reasonable effort, and by
3 providing due and adequate notice of the proceedings and of the matters set forth therein to the
4 other Class Members. The Notice fully satisfied the requirements of due process.

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6 6. As set forth in the Declaration of Jarrod Salinas With Respect to Notice and
7 Settlement Administration, no objections or exclusions were submitted by any Class Member, and
8 there are no work week disputes. The positive response of the Class underscores that the
9 Settlement is fair, reasonable, and adequate.

10 7. The Court finds the Settlement was entered into in good faith, that the Settlement is
11 fair, reasonable, and adequate, and that the Settlement satisfies the standards and applicable
12 requirements for final approval of this class action settlement under California law, including the
13 provisions of California Code of Civil Procedure section 382 and California Rules of Court, Rule
14 3.769.

15
16 8. Upon entry of this Order, compensation to the participating members of the
17 Settlement Class shall be effected pursuant to the terms of the Settlement Agreement.

18 9. All envelopes transmitting settlement distribution to Settlement Class Members
19 shall bear the notation, "**YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED.**"

20 10. As set forth in the Settlement Agreement, all settlement checks shall be negotiable
21 for one hundred and eighty (180) days from the date of mailing.

22 11. Phoenix shall mail a reminder postcard to any Class Member whose settlement
23 distribution check has not been negotiated within sixty (60) days after the date of mailing.

24 12. If and Class Member who is a current employee of Defendant and the distribution
25 mailed to that Class Member is returned to Phoenix as being undeliverable, and Phoenix is unable
26 to locate a valid mailing address, Phoenix shall arrange with Defendant to have distribution
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1 delivered to any currently employed Class Member at their place of employment.

2 13. If a settlement check is not cashed, deposited, or otherwise negotiated within the
3 one hundred and eighty (180) day deadline by a Class Member, the check will be voided, and the
4 funds associated with any such voided checks shall be distributed in the name of the Class
5 Member to the State of California Controller's Unclaimed Property division.

6 14. Plaintiff's enhancement award in the amount of \$6,000 is approved.

7 15. The Court awards Class Counsel attorneys' fees in the amount of \$23,210 which
8 are reasonable and are hereby approved by the Court.

9 16. The Court finds that the awarded attorneys' fees are reasonable under the
10 percentage of the fund or "common fund" method. *See Laffitte v. Robert Half Internat, Inc.* (2016)
11 1 Cal.5th 480, 503. Specifically, the Gross Settlement Amount of \$70,000 represents a true
12 common fund, as there is no claims process and no money under the Settlement will revert to
13 Defendant. The Court finds that one-third of the common fund, or \$23,310, is fair, reasonable and
14 appropriate. The Court has also reviewed the Declarations of Scott E. Wheeler and Justin A.
15 Wheeler and finds that Class Counsel has incurred a lodestar of \$76,887.50. The Court finds that
16 the hours Class Counsel dedicated to litigating this case, and their requested hourly rates, are fair,
17 reasonable and appropriate. Thus, the Court awards attorney's fees of \$23,310 are also reasonable
18 under the lodestar method.

19 17. The Court approves the payment of attorney's fees to Class Counsel in the amount
20 of \$23,310 and reimbursement of reasonable litigation expenses in the amount of \$10,250.82 to
21 the Law Office of Scott E. Wheeler, and Defendant shall cause these sums to be paid to Class
22 Counsel in accordance with the terms of the Settlement Agreement.

23 18. The Court approves the payment of actual settlement administration costs in the
24 amount of \$4,950 to Phoenix, and Defendant shall cause this sum to be paid to Phoenix, in
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1 accordance with the terms of the Settlement Agreement.

2 19. The Court approves and orders payment in the amount of \$9,000 (which represents
3 75% of the \$12,000 allocated for the PAGA payment) to the California Labor and Workforce
4 Development Agency, and \$3,000 to the aggrieved employees (which represents 25% of the
5 \$12,000 allocated for the PAGA payment) which represents a fair and equitable sum for resolution
6 of claims raised pursuant to California Labor Code section 2698 *et seq.*, and Defendant shall cause
7 this sum to be paid to the LWDA and aggrieved employees in accordance with the terms of the
8 Settlement Agreement.

9 20. The Gross Settlement Fund, the Net Settlement Fund, and the methodology used to
10 calculate and pay each Settlement Class Member's individual settlement payment are fair and
11 reasonable, and the Court authorizes the Settlement Administrator to issue individual settlement
12 payments to each Settlement Class Member in accordance with the terms of the Settlement
13 Agreement.

14 21. Upon the Effective Date, Plaintiff and all members of the Settlement Class, shall
15 have, by operation of this Order and Judgment, fully, finally, and forever released, relinquished,
16 and discharged Defendants from all Released Claims as defined by the terms of the Settlement
17 Agreement.

18 22. Judgment in this matter is entered in accordance with the terms of the Amended
19 Settlement Agreement and Addendum, the Court's Preliminary Approval Order, and this Final
20 Approval Order against Defendant in favor of Plaintiff and the Settlement Class. This Judgment is
21 intended to be a final disposition of the above captioned action in its entirety and is intended to be
22 immediately appealable.

23 23. This Court shall retain jurisdiction with respect to all matters related to the
24 administration and consummation of the Settlement, to enforce the terms of the judgment, and any
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1 and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including
2 but not limited to all matters related to the Settlement and the determination of all controversies
3 relating thereto.

4 24. Class Counsel shall file a Notice of Entry of Order and Judgment Granting Final
5 Approval, and provide the same to Phoenix, who shall post the Order and Judgment on its website
6 within seven (7) calendar days after entry of the Order and Judgment. Phoenix shall post a copy
7 of this signed judgment for one hundred and eighty (180) calendar days on its website in
8 compliance with Rule 3.771(b) of the California Rules of Court in order to provide notice to the
9 Class Members of this Order and Judgment. Phoenix shall also provide a mailed copy of the
10 Notice of Entry of Order and Judgment to Class Members.

11 25. An Final Report (Nonappearance) Hearing regarding compliance with the terms of
12 the Settlement is set for CE * ~ • AGH, 2024 at ~~8:30 a.m.~~ ^{10:00 a.m.} in Department SSC 1. A report
13 from Phoenix regarding distribution of the Settlement funds shall be filed ten (10) court days in
14 advance of the hearing. The report from Phoenix shall be in the form of a Declaration from the
15 Settlement Administrator, by a declarant with personal knowledge of the facts, and describes: (i)
16 the date the checks were mailed, (ii) the total number of checks mailed to class members, (iii) the
17 average amount of those checks, (iv) the number of checks that remain uncashed, (v) the total
18 value of those uncashed checks, (vi) the average amount of the uncashed checks, and (vii) the
19 nature and date of the disposition of those unclaimed funds.

20 26. Plaintiff's Motion for Final Approval is hereby granted and the Court directs that a
21 judgment shall be entered in accordance with the terms of this Order.

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27. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.



DATED: U&f à^!Aí ÉCCH

Stuart M. Rice / Judge
HONORABLE STUART M. RICE
JUDGE OF THE SUPERIOR COURT