

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG18898840
Order After Hearing Re: of 03/03/2020

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 03/03/2020.

Chad Finke Executive Officer / Clerk of the Superior Court

By *Kenna L. Wright*^{digital}
Deputy Clerk



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FEB 05 2020

FILED
ALAMEDA COUNTY

MAR 3 - 2020

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deput

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

FRANCISCO CARRASCO, as an individual and on behalf of all others similarly situated,

Plaintiffs,

v.

VINCE, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive,

Defendants.

Civil Case No. RG18898840

~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES, COSTS, REPRESENTATIVE ENHANCEMENT, AND ADMINISTRATOR'S COSTS

1 This matter is now before the Court on Francisco Carrasco's ("Plaintiff") Motion for
2 Final Approval of the Class Action Settlement, Attorneys' Fees, Costs, Representative
3 Enhancement, and Administrator's Costs. The Court has read, heard, and considered all the
4 pleadings and documents submitted, and the presentations made in connection with the Motion
5 which came on for hearing on March 3, 2020.

6 **I. BACKGROUND**

7 On May 7, 2019, Plaintiff, individually and on behalf of a purported class of similarly
8 situated individuals, filed a Class Action Complaint ("Class Action") against Defendant Vince,
9 LLC ("Defendant") for 1) Violation of Cal. Labor Code § 226(a); 2) Violation of Cal. Labor
10 Code §§ 510, 558, and 1194; 3) Violation of Cal. Labor Code § 2698, *et seq.*; and 4) Violation of
11 Cal. Bus. & Prof. Code § 17200. The Parties reached a Settlement subject to Court approval as
12 represented in the Joint Stipulation of Class Action Settlement and Release ("Settlement
13 Agreement" or "Settlement").

14 Plaintiff conducted informal discovery and investigation, including obtaining wage
15 statement data for the entire class. Plaintiff's counsel also obtained a prior declaration from
16 Defendant's Senior Manager for Payroll, Scott Horvitz, attesting to the fact that Defendant
17 properly calculated the regular rate of pay. Thus, the damage analysis was focused on the wage
18 statement claim. On October 9, 2018, the Parties then attended a full day of mediation before
19 renowned class action mediator, David Rotman, Esq., at which time the Parties were able to
20 reach a resolution, the terms of which were documented and approved in the Third Amended
21 Joint Stipulation for Class Action Settlement and Release ("Settlement Agreement"), which was
22 revised per this Court's Orders.

23 **A. Class Members**

24 The "Class Members" are defined as: "[a]ll persons employed as non-exempt hourly paid
25 employees in any of Defendant's facilities located in the State of California and who received a
26 wage statement containing the line item 'Retail OT .5X' during the Settlement Period (defined as
27 March 28, 2014 through August 20, 2019)."

1 **B. Operation of the Settlement.**

2 Pursuant to the Order Granting Plaintiff's Motion for Preliminary Approval of Class
3 Action Settlement ("Preliminary Approval Order") dated August 20, 2019, this Court
4 conditionally certified the Class and granted preliminary approval to the Settlement. The
5 Preliminary Approval Order also approved of the proposed forms of notice and notice plan. The
6 Court entered the Preliminary Approval Order after review and consideration of all of the
7 pleadings filed in connection herewith, and the oral presentations made by counsel at the hearing.

8 In compliance with the Preliminary Approval Order, the Class Notices were sent to all
9 Class Members via first class mail. The notice process was timely completed. This Court finds
10 that the Settlement appears to be the product of serious, informed, non-collusive negotiations,
11 has no obvious deficiencies, and does not improperly grant preferential treatment to any
12 individuals. There were zero valid (0) opt-outs and zero (0) objections to the Settlement.

13 The Court finds that the Settlement was entered into in good faith pursuant to California
14 *Code of Civil Procedure* section 877.6. The Court further finds that the Settlement is fair,
15 reasonable and adequate and that Plaintiff has satisfied the standards for final approval of a class
16 action settlement under California law. Under the provisions of California *Code of Civil*
17 *Procedure* section 382 and Federal Rule of Civil Procedure 23, as approved for use by the
18 California state court in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971), the trial court has
19 discretion to certify a class where:

20 [Q]uestions of law or fact common to the members of the class
21 predominate over any questions affecting only individual
22 members, and that a class action is superior to the available
23 methods for the fair and efficient adjudication of the controversy
24 ... Fed. R. Civ. Proc. 23.

25 Certification of a settlement class is the appropriate judicial device under these circumstances.

26 Based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED**
27 **AS FOLLOWS:**

28 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
Settlement Agreement filed in this case.

2. The Court has jurisdiction over the subject matter of the litigation, the Class

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS' FEES, COSTS, REPRESENTATIVE ENHANCEMENT, AND
ADMINISTRATOR'S COSTS**

1 Representative, the other Members of the Settlement Class, and Defendant.

2 3. The Court finds that the dissemination of the Notice of Class Action Settlement as
3 disseminated to the Class Members, constituted the best notice practicable under the
4 circumstances to all persons within the definition of the Class, and fully met the requirements of
5 California law and due process under the United States Constitution.

6 4. The Court approves the settlement of the above-captioned action, as set forth in
7 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The
8 Settling Parties are directed to perform in accordance with the terms set forth in the Settlement
9 Agreement.

10 5. Except as otherwise provided in the Settlement Agreement, the Settling Parties
11 are to bear their own costs and attorneys' fees.

12 6. The Court hereby certifies the following Class for settlement purposes only: "[a]ll
13 persons employed as non-exempt hourly paid employees in any of Defendant's facilities located
14 in the State of California and who received a wage statement containing the line item 'Retail OT
15 .5X' during the Settlement Period (defined as March 28, 2014 through August 20, 2019)."

16 7. With respect to the Class and for purposes of approving the settlement only and
17 for no other purpose, this Court finds and concludes that: (a) the members of the Class are
18 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
19 questions of law or fact common to the Class, and there is a well-defined community of interest
20 among Members of the Class with respect to the subject matter of the claims in the Litigation; (c)
21 the claims of Class Representative is typical of the claims of the members of the Class; (d) the
22 Class Representative has fairly and adequately protected the interests of the members of the
23 Class; (e) a class action is superior to other available methods for an efficient adjudication of this
24 controversy; and (f) the counsel of record for the Class Representative, *i.e.*, Class Counsel, are
25 qualified to serve as counsel for the Plaintiff in her individual and representative capacity and for
26 the Class.

27 8. Defendant shall fund \$190,000.00 of the total Gross Settlement Fund pursuant to
28 the terms of the Settlement Agreement.

9. The Court approves the Individual Settlement Payment amounts, which shall be

1 distributed pursuant to the terms of the Settlement Agreement.

2 10. Defendant shall pay: (a) to Class Counsel attorneys' fees in the amount of
3 \$63,333.33 and reimbursement of costs in the amount of \$15,163.89; (b) \$10,000 to Plaintiff as
4 his representative enhancement award; (c) \$18,750.00 to be paid to the Labor Workforce
5 Development Agency for its 75% share of \$25,000 allocated as penalties under the Private
6 Attorneys General Act; (d) \$9,500.00 to the Claims Administrator, Phoenix Settlement
7 Administrators, for its fees and costs relating to the claims administration process. The Court
8 finds that these amounts are fair and reasonable. Defendant is directed to make such payments
9 from the Gross Settlement Fund and in accordance with the terms of the Settlement Agreement.

10 11. Per the Court's Preliminary Approval Order entered on August 20, 2019, any
11 Settlement Checks remaining un-cashed for more than 180 days after issuance (collectively,
12 "Voided Settlement Checks"), plus any interest that has accrued thereon, shall be distributed as
13 follows:

14 a. Voided Individual Settlement Payment Checks. Any checks issued by the
15 Settlement Administrator to Participating Class Members for the Individual Settlement Payments
16 shall be negotiable for 180 days. Individual Settlement Payments returned as undeliverable or
17 remaining un-cashed for more than 180 days after issuance (collectively, "Voided Individual
18 Settlement Payment Checks") shall be distributed by the Settlement Administrator to *cy pres*
19 recipient Legal Aid at Work. Those Participating Class Members who fail to timely cash their
20 checks will be deemed to have waived any right in or claim to their portion of the Settlement
21 Funds, but the Agreement nevertheless will be binding upon them. By virtue of the Court's
22 approval of this Agreement, its terms shall control over any principles of escheat or provisions of
23 unclaimed property law. In no circumstance will any of the Settlement Fund be retained by or
24 revert to Defendant.

25 b. Voided PAGA Payment Checks. Any checks issued by the Settlement
26 Administrator to Class Members for the PAGA Payments shall be negotiable for 180 days.
27 PAGA Payments returned as undeliverable or remaining un-cashed for more than 180 days after
28 issuance (collectively, "Voided PAGA Payment Checks") shall be distributed by the Settlement
Administrator to the LWDA.

1 12. The Parties are further ordered to comply with California Code of Civil Procedure
2 § 384(b), *i.e.*, submitting a report stating the total amount that was actually paid to the class
3 members and compliance with the terms of the Settlement.

4 13. The Court hereby enters final judgment in this case in accordance with the terms
5 of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of
6 the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction
7 over the action and the Parties, including all Settlement Class Members, for purposes of
8 enforcing and interpreting this Order and the Settlement. *A compliance hearing is*
scheduled on 12-10-20 in Dept. 16 at 9:00am.
9 IT IS SO ORDERED.

10 MAR 3 - 2020

11 Dated: _____



12 Honorable Judge of the Superior Court
13 **MICHAEL MARKMAN**

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

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Executed on 03/03/2020.

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