

1 AARON C. GUNDZIK (State Bar No. 132137)
2 REBECCA G. GUNDZIK (State Bar No. 138446)
3 GARTENBERG GELFAND HAYTON LLP
4 15260 Ventura Blvd., Suite 1920
5 Sherman Oaks, CA 91403
6 Telephone: (213) 542-2100
7 Facsimile: (213) 542-2101

8 MARSHALL A. CASKEY (State Bar No. 65410)
9 DANIEL M. HOLZMAN (State Bar No. 176663)
10 CASKEY & HOLZMAN
11 24025 Park Sorrento, Ste. 400
12 Calabasas, CA 91302
13 Telephone: (818) 657-1070
14 Facsimile: (818) 297-1775

15 Attorneys for Plaintiff Diego Medina, individually
16 and on behalf of all others similarly situated

17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

15 DIEGO MEDINA, individually and on behalf
16 of all others similarly situated,

17 Plaintiff,

18 vs.

19 KAWEAH PUMP, INC., a California
20 Corporation, and DOES 1 through 25,

21 Defendants.

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

JAN 07 2019

STEPHANIE CAMERON, CLERK
BY: *[Signature]*

Case No.: 265579

[PROPOSED] ORDER:

- (1) FINALLY APPROVING CLASS ACTION SETTLEMENT;
- (2) AWARDING ATTORNEY'S FEES AND EXPENSES TO CLASS COUNSEL;
- (3) APPROVING A SERVICE AWARD FOR THE CLASS REPRESENTATIVE; AND
- (4) APPROVING PAYMET TO THE SETTLEMENT ADMINISTRATOR; AND

Date: January 7, 2019
Time: 8:30 a.m.
Dept.: 1

Complaint Filed: May 27, 2016

FILE BY FAX

1 On January 7, 2018 in Department 1 of the above-entitled court, the Motion for Final
2 Approval of Class Action Settlement of Plaintiff Diego Medina, individually and on behalf
3 of all others similarly situated ("Plaintiff"), came on for hearing.

4 The Court, having granted preliminary approval of the settlement and having
5 considered the Motion, Memorandum of Points and Authorities and the Declarations of
6 Aaron Gundzik, Daniel Holzman, Diego Medina and Elizabeth Kruckenberg, and having
7 received no objections to the settlement, and good cause appearing therefore,

8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

9 1. The motion for final approval the settlement is granted.

10 2. The parties to this action are Plaintiff Diego Medina and Defendant Kaweah
11 Pump, Inc. ("Kaweah Pump" or "Defendant").

12 3. After participating in a mediation, Plaintiff and Defendant have agreed to a
13 proposed settlement of the action on behalf of the Class that Plaintiff seeks to represent. The
14 terms of the proposed settlement are set forth in the Class Action Settlement and Release
15 Agreement and the First Amendment to Class Action Settlement and Release Agreement,
16 both of which are attached to the Declaration of Aaron Gundzik as Exhibits A and B.

17 4. The Court has jurisdiction over the subject matter of this action and all parties
18 to this action.

19 5. The terms used in this Order have the meaning assigned to them in the
20 parties' settlement agreement.

21 6. The following persons are members of the: All persons who were employed
22 by Defendant and classified as non-exempt employees during the Class Period.

23 7. The Class Period is from May 27, 2012 through August 29, 2018.

24 8. In settlement, Kaweah Pump will pay the gross settlement amount of
25 \$125,000, of which, \$35,008.87 has already been paid to certain Class Members. From this
26 gross amount, the parties propose to deduct \$5,500 in fees to be paid to the Settlement
27 Administrator, a Service Payment to Representative Plaintiff Tiffany Hernandez in the
28

1 amount of \$5,000, a payment of \$1,250 to the California Labor Workforce and Development
2 Agency, Class Counsel's costs of \$7,000, and Class Counsel's attorneys' fees of \$41,666.66.

3 9. The amount remaining, after the above-referenced deductions approved by
4 the Court, will be distributed to the individual Class Members in accordance with the
5 formula specified in the Settlement Agreement.

6 10. All of the Class Members are bound by the Settlement, this Order, and the
7 Court's judgment in this Action.

8 11. As of the Effective Date of the settlement (which is the date of entry of the
9 Final Approval Order, if Plaintiff and Class Counsel waive any right to appeal), all of the
10 Released Claims of each Class Member is and shall be deemed to be released as against the
11 Released Parties. All Class Members will be precluded in the future from bringing any
12 Released Claims against the Released Parties.

13 12. The Court finds that the Notice of Class Action Settlement ("Notice of
14 Settlement") has been mailed to all members of the Class by the best practicable means as
15 previously ordered by the Court, and that such Notice of Settlement fairly and adequately
16 described the terms of the proposed Settlement Agreement, the manner in which the Class
17 Members could object to or participate in the settlement, and the manner in which Class
18 Members could opt out of the Settlement; was the best notice practicable under the
19 circumstances; was valid, due and sufficient notice to all Class Members; and complied fully
20 with California Rule of Court 3.769, due process, and all other applicable laws. The Court
21 further finds that a full and fair opportunity has been afforded to Class Members to
22 participate in the proceedings convened to determine whether the proposed Settlement
23 Agreement should be given final approval.

24 14. The Court finally approves of the distribution of the Net Settlement Amount
25 to the Class Members. Class Members are not required to submit a claim form in order to
26 receive payment. Rather, the settlement amount paid to each member of the Class will be
27 based on the number of Workweeks she or he worked for Kaweah during the Class Period.
28

1 15. The Court finds that the Settlement Agreement is fair, reasonable and
2 adequate as to the Class, the named Plaintiff and Defendant, and is the product of good faith,
3 arms' length negotiations between the parties, and further, that the Settlement Agreement is
4 consistent with public policy, and fully complies with all applicable provisions of law.
5 Accordingly, the Court hereby finally and unconditionally approves the Settlement
6 Agreement and specifically approves of the allocation of the Gross Settlement Amount of
7 \$125,000 ("Gross Settlement Amount"), as follows, to be distributed pursuant to the
8 provisions of paragraph 16 of this Order:

- 9 a. The Court approves of payment of the remainder of the Gross Settlement
10 Amount (the "Net Settlement Amount") after the deductions listed below,
11 to Class Members, and that payment to each Settlement Class Member
12 shall be deemed one-third wages, one-third penalties and interest and one-
13 third expense reimbursement;
- 14 b. The Court approves of the payment of Settlement Administration Costs of
15 \$5,500 to Phoenix Settlement Administrators;
- 16 c. The Court approves of a payment in the amount of \$1,250 to the
17 California Labor and Workforce Development Agency ("LWDA") as the
18 LWDA's share of the settlement of the Private Attorneys General Act of
19 2004 ("PAGA") claims;
- 20 d. The Court approves of the service and release payment in the amount of
21 \$5,000 to Plaintiff Diego Medina, for his time and effort in pursuing this
22 Action;
- 23 e. The Court approves of Class Counsel's attorneys' fees request of
24 \$41,666.66, which is one-third of the Gross Settlement Amount, finding
25 that it is reasonable to compensate Plaintiff's counsel on a contingency
26 basis in light of the benefit provided to the Class and that a lodestar
27 analysis confirms the reasonableness of the contingency fee;
- 28

- 1 f. The Court approves of Class Counsel's request for reimbursement of
2 litigation costs and expenses in the amount of \$7,000;
- 3 g. If a Class Member's settlement payment check is not cashed within 180
4 days, the check will be void and a stop payment order may be placed on
5 the check, and that approximately one year after the Effective Date, the
6 amount of each uncashed Settlement Payment check shall be entirely
7 distributed to the Department of Industrial Relations Labor Code § 96.7
8 Unpaid Wage Fund in the name of the individual Settlement Class
9 Member, which will provide such Settlement Class Members a further
10 opportunity to obtain their settlement payments. Upon the transfer of any
11 such funds to the Unpaid Wage Fund, the Settlement Administrator shall
12 notify such Class Members of that fact and provide instructions on how to
13 recover such funds.

14 16. The Court approves of the following implementation schedule for further
15 proceedings:

- 16 • Deadline for Defendant to pay the sum of \$89,991.13, which is the remainder
17 of the Gross Settlement Amount, and the sum required to satisfy the
18 employer's share of all payroll taxes and fees to the Settlement
19 Administrator: Within sixty-three (63) calendar days of the date of this Order,
20 which shall be March 11, 2019
- 21 • Mailing of Payments to Class Members: March 21, 2019.
- 22 • Payment of service award to Representative Plaintiff: March 21, 2019.
- 23 • Payment to Class Counsel of Class Counsel's attorneys' fees and Class
24 Counsel's costs: March 21, 2019.
- 25 • Payment to LWDA for its share of PAGA settlement: March 21, 2019.

26 17. A compliance hearing is set for 5.30.19 ³⁰ 11 If a
27 satisfactory compliance status report is filed at least 5 court days before the compliance
28 hearing, no appearances will be required.

AND APPROVED BY THE COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. A compliance hearing is set for 5.27.20 8³⁰ D#1. If a
satisfactory compliance status report is filed AND APPROVED BY THE COURT at least 5 court days before the compliance
hearing, no appearances will be required.

18. The posting of this Order and the Judgment on the static website maintained
by the Settlement Administrator shall be deemed compliance with California Rule of Court
3.771(b) concerning providing notice of judgment to Class Members.

Dated: 1.9.19


Hon. Melinda M. Reed

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 15260 Ventura Blvd., Suite 1920, Sherman Oaks, California 91403.

On December 11, 2018, I served the following document described as

- **[PROPOSED] ORDER**

on the interested parties in this action:

(X) by serving () the original **(X)** true copies thereof as follows:

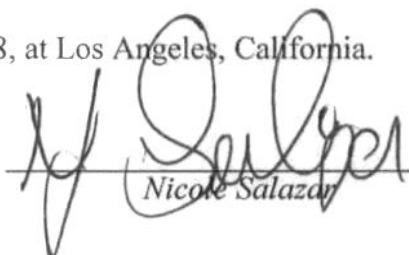
PLEASE SEE ATTACHED SERVICE LIST

<p>() BY MAIL</p> <p>I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.</p>	<p>() BY FACSIMILE TRANSMISSION</p> <p>I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (213) 542-2101. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.</p>
<p>(XX) BY OVERNIGHT DELIVERY</p> <p>Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.</p>	<p>() BY ELECTRONIC TRANSMISSION</p> <p>I caused the above-described document to be electronically served to the names and email addresses listed on the Service List attached hereto.</p>

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on December 11, 2018, at Los Angeles, California.



Nicole Salazar

SERVICE LIST

Susan K. Hatmaker, Esq.
Bradley J. Levang, Esq.
Hatmaker Law Group
7522 N. Colonial Avenue, Suite 105
Fresno, CA 93711
Telephone: (559) 374-0077
Facsimile: (559) 374-0078

Email: susan@hatmakerlaw.com
brad@hatmakerlaw.com

Attorneys for Defendant Kaweah Pump, Inc.

Marshall A. Caskey, Esq.
Daniel M. Holzman, Esq.
CASKEY & HOLZMAN
24025 Park Sorrento, Ste. 400
Calabasas, CA 91302
Telephone: (818) 657-1070
Facsimile: (818) 297-1775

Email: mcaskey@caskeyholzman.com
dholzman@caskeyholzman.com
nbarari@caskeyholzman.com

(Served via U.S. mail)
Attorneys for Plaintiff Diego Medina,
Individually and on behalf of all others
similarly situated