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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JUN 09 2021

BY   
JESSICA MORALES, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN BERNARDINO**

RANDOLPH FITCH, on behalf of  
himself, all others similarly situated, and  
on behalf of the general public

Plaintiff,

v.

SHAW INDUSTRIES, INC.; SHAW  
INDUSTRIES GROUP, INC.; and  
DOES 1-100,

Defendants.

Case No. CIVSB2024674

*[Assigned to the Honorable David Cohn]*

**~~PROPOSED~~ ORDER GRANTING  
PLAINTIFF RANDOLPH FITCH'S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF CLASS  
NOTICE, SETTING OF FINAL  
APPROVAL HEARING DATE**

Date: June 9, 2021

Time: 10:00 a.m.

Dept.: S-26

2021

1     **I.    RECITALS**

2           This action is currently pending before this Court as a putative class action (the “Action”).  
3 Plaintiff Randolph Fitch has applied to this Court for an order preliminarily approving the  
4 settlement of the Action in accordance with the Joint Stipulation and Settlement Agreement (the  
5 “Agreement”), which together with the exhibits annexed thereto, sets forth the terms and  
6 conditions for a proposed settlement and entry of judgment upon the terms and conditions set forth  
7 therein. The Court has read and considered the Memorandum of Points and Authorities in support  
8 of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, Conditional  
9 Certification, Approval of Class Notice, Setting of Final Approval Hearing Date; and Declaration  
10 of David Mara, Esq., in Support of Plaintiff’s Motion for Preliminary Approval of Class Action  
11 Settlement, and attached exhibits. For purposes of this Order, the Court adopts all defined terms  
12 as set forth in the Agreement.

13     **II.   FINDINGS**

14           After review and consideration of the Agreement and Plaintiff’s motion for preliminary  
15 approval and the papers in support thereof, the Court hereby finds and orders as follows:

16           1.     The Agreement falls within the range of reasonableness meriting possible final  
17 approval.

18           2.     The certification of the Class solely for purposes of settlement is appropriate in that:  
19 (1) the Class Members are ascertainable and so numerous that joinder of all Class Members is  
20 impracticable; (2) there are questions of law and fact common to the Class which predominate  
21 over any individual questions; (3) Plaintiff’s claims are typical of the claims of the Class; (4)  
22 Plaintiff and his Counsel have fairly and adequately represented and protected the interests of the  
23 Class; and (5) a class action, and class-wide resolution of the action via class settlement procedures  
24 is superior to other available methods for the fair and efficient adjudication of the controversy.

25           3.     The Agreement, and the obligations of the Parties as set forth therein, is fair,  
26 reasonable, and is an adequate settlement of this case and is in the best interests of the Class in  
27 light of the factual, legal, practical, and procedural considerations raised by this case.

1           4.       Plaintiff does not have any conflicts that would preclude him from serving as Class  
2 Representative, and his appointment comports with the requirements of due process.

3           5.       Class Counsel does not have any conflicts that would preclude them from acting as  
4 Class Counsel, and they meet the requirements for appointment as Class Counsel and the  
5 requirements of due process.

6           6.       The notice of proposed class action settlement attached as Exhibit A to the  
7 Agreement complies with due process because the notice of proposed class action settlement is  
8 reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the  
9 terms of the proposed Agreement; and (iii) their rights, including the right to either participate in  
10 the settlement, exclude themselves from the settlement, or object to the settlement. Plaintiff's  
11 proposed plan for class notice and settlement administration is the best notice practicable under  
12 the circumstances.

13 **III.   ORDER**

14           The Court having considered the papers submitted in support of the motion for preliminary  
15 approval, HEREBY ORDERS THE FOLLOWING:

16           1.       The Court finds on a preliminary basis that the provisions of the Agreement are  
17 fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

18           2.       The following Class is conditionally certified for purposes of settlement only: All  
19 current and former non-exempt California employees of Shaw in California at any time between  
20 December 3, 2014 through whichever date is earlier: (1) the date of preliminary approval; or (2)  
21 June 19, 2021; who have not signed a release of the claims at issue in the Lawsuit.

22           3.       The Agreement provides for the following release as to Participating Class  
23 Members,<sup>1</sup> which is hereby approved conditionally: Any and all applicable California wage and  
24 hour claims, rights, demands, liabilities and causes of action that were alleged or could have been  
25 alleged based upon the factual allegations in the complaint, whether known or unknown,  
26 including without limitation statutory, constitutional, contractual or common law claims for meal

27 \_\_\_\_\_  
28 <sup>1</sup> Participating Class Members are Class Members who do not submit a valid and timely request to  
exclude themselves from the Settlement.

1 and rest break violations, unpaid minimum wage, unpaid overtime, reimbursement of business  
2 expenses, wage statement penalties, waiting time penalties, damages, unpaid costs, penalties,  
3 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution,  
4 equitable relief, or other relief under California law, based on the following categories of  
5 allegations: (a) failure to pay wages, (b) failure to provide meal and rest breaks, (c) failure to  
6 provide accurate wage statements, (d) failure to reimburse business expenses, (e) failure to timely  
7 pay all wages, (f) violations of the Private Attorneys' General Act, (g) violations of the Unfair  
8 Competition Law, and (h) any and all other wage and hour violations. The Released Claims shall  
9 be released for the Class Period. The Class Period is December 3, 2014 through whichever date  
10 is earlier: (1) the date of preliminary approval; or (2) June 19, 2021.

11 3. The settlement appears to be fair, adequate and reasonable to the Class. The  
12 settlement falls within the range of reasonableness and appears to be presumptively valid, subject  
13 only to any objections that may be raised at the final approval hearing and final approval by this  
14 Court.

15 4. Plaintiff Randolph Fitch is conditionally approved as the Class Representative for  
16 the Class.

17 5. The proposed Class Representative Enhancement Payment of \$5,000 payable to  
18 Plaintiff Randolph Fitch for his services as class representative is conditionally approved.

19 6. Mara Law Firm, PC is conditionally approved as Class Counsel for the Class.

20 7. The proposed awards of up to \$831,666 in attorneys' fees and up to \$30,000 in  
21 actual costs payable to Class Counsel are conditionally approved.

22 8. A final approval hearing on the question of whether the settlement, attorneys' fees  
23 and costs to Class Counsel, and the Class Representative Enhancement Payment should be finally  
24 approved as fair, reasonable and adequate as to Class Members is scheduled in Department S26  
25 on the date and time set forth in the Implementation Schedule below.

26 9. The Court confirms Phoenix Settlement Administrators as the Settlement  
27 Administrator.

28

1           10.    The proposed payment of up to \$30,000 in costs to Phoenix Settlement  
2 Administrators for its services as the Settlement Administrator is conditionally approved.

3           11.    The Court also hereby conditionally approves and orders payment from the Gross  
4 Settlement Fund of the PAGA Payment of \$100,000 (75% of which shall be paid to the Labor and  
5 Workforce Development Agency, and 25% of which shall become part of the Net Settlement Fund  
6 distributable to Participating Class Members).

7           12.    The Court approves, as to form and content, the notice of class action settlement in  
8 substantially the form attached as Exhibit A to the Agreement. The Court approves the procedure  
9 for Class Members to participate in, to opt out of, and to object to, the settlement as set forth in the  
10 notice.

11          13.    The Court directs the mailing of the notice of class action settlement by first class  
12 mail to Class Members in accordance with the Implementation Schedule below. The Court finds  
13 the dates selected for the mailing and distribution of the notice, as set forth in the Implementation  
14 Schedule, meet the requirements of due process and provide the best notice practicable under the  
15 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

16          14.    To facilitate administration of the settlement pending final approval, the Court  
17 hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or  
18 administrative proceedings (including, but not limited to, filing claims with the Division of Labor  
19 Standards Enforcement of the California Department of Industrial Relations) regarding claims  
20 released by the Agreement unless and until such Class Members have filed valid Requests for  
21 Exclusion with the Settlement Administrator and the time for filing valid Requests for Exclusion  
22 with the Settlement Administrator has elapsed. This provision shall not apply to claims not alleged  
23 in the Action.

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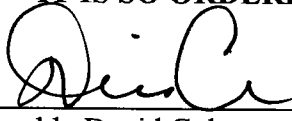
1 **IV. IMPLEMENTATION SCHEDULE**

2 The Court orders the following Implementation Schedule for further proceedings:

3 Deadline for Defendant to submit Class Data to Settlement Administrator:	June 16, 2021 [5 business days after entry of this Order]
4	
5 Deadline for Settlement Administrator to Mail the Class Notice to Class Members	June 30, 2021 [14 calendar days after receipt of the Class Data]
6	
7	
8 Deadline for the Settlement Administrator to Set Up a Settlement Website	July 20, 2021 [20 calendar days after receipt of the Class Data]
9	
10	
11 Deadline for Class Members to Postmark Requests for Exclusion	August 19, 2021 [30 calendar days after mailing of Notice to Class Members]
12	
13	
14 Deadline for Class Members to Postmark Objections to the Settlement	August 19, 2021 [30 calendar days after mailing of Notice to Class Members]
15	
16	
17 Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment	16 court days before Final Approval Hearing
18	
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20	
21 Final Approval Hearing and Final Approval	<u>9/15</u> , 2021, at <u>10:00</u>
22	
23	

24 **IT IS SO ORDERED.**

25 Dated: 6/9, 2021

26 By   
27 Honorable David Cohn  
28 San Bernardino County Superior Court Judge