

FILED
Superior Court of California
County of Los Angeles

MAY 27 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By _____ Deputy

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 MIRNA NUNEZ, individually, and on behalf
12 of other members of the general public
similarly situated,
13 Plaintiff,
14 vs.
15 CREATIVE DRY PROCESS, INC., a
California Corporation; and DOES 1 through
16 100, inclusive,
17 Defendants.

Case No. 20STCV15787
Assigned to Hon. Elihu M. Berle, Dept. 6

**[PROPOSED] ORDER FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: May 11, 2021
Hearing Time: 10:00 a.m.
Department: 6

Complaint Filed: April 23, 2020
Trial Date: None Set

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21 On May 11, 2021, the Honorable Elihu M. Berle considered Plaintiff MIRNA NUNEZ's
22 ("Plaintiff") Motion for Preliminary Approval of Class Action Settlement and Provisional Class
23 Certification for Settlement Purposes Only ("Approval Motion"), Declarations of Cody Payne and
24 Jodey Lawrence in Support of Motion for Preliminary Approval of Class Action Settlement, the
25 Joint Stipulation for Class Action Settlement ("Settlement Agreement"), Notice of Class Action
26 Settlement ("Class Notice") and the documents submitted in support of the Approval Motion.

27 Cody Payne, Esq. of Payne Nguyen, LLP appeared for and on behalf of Plaintiff Mirna
28 Nunez and the Putative Class; Jeffrey Fuchsman of Ballard Rosenberg Golper & Savitt, LLP,

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BY FAX

1 appeared on behalf of Defendants Creative Dry Process, Inc. and United Wash & Dye, Inc.
2 (collectively “Defendants”).

3 Having considered the Approval Motion, the Declarations, and all supporting legal
4 authorities and documents, the Court ordered as follows:

5 **IT IS HEREBY ORDERED THAT:**

6 1. This Order incorporates by reference the definitions in the Settlement Agreement,
7 attached as **Exhibit A** to the Supplemental Declaration of Cody Payne, and all terms defined therein
8 shall have the same meaning in this Order as set forth in the Settlement Agreement.

9 2. For settlement purpose only, the Court certifies the following Settlement Class: All
10 current and former non-exempt hourly employees of Defendants in California during the period
11 beginning April 23, 2016 through May 24, 2021.

12 3. The Court preliminarily appoints named Plaintiff Mirna Nunez as Class
13 Representative and Cody Payne, Esq. and Kim Nguyen Esq. of Payne Nguyen, LLP as Class
14 Counsel.

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

27 5. The Court approves, as to form and content, the proposed Class Notice attached as
28 **Exhibit 1** to the Settlement Agreement. Attached hereto as **Exhibit A**.

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1 6. The Court directs the mailing of the Class Notice by first-class mail to the Class
2 Members in accordance with the schedule and procedures set forth in the Settlement Agreement.
3 The Court finds that the dissemination of the Class Notice set forth in the Settlement Agreement
4 complies with the requirements of due process of law, and appears to be the best notice practicable
5 under the circumstances.

6 7. The Court hereby preliminarily approves the definition and disposition of the Gross
7 Settlement Fund of \$265,000, which is inclusive of payment of attorneys' fees not to exceed
8 \$88,333.33, which is 1/3 of the Gross Settlement Fund, costs not to exceed \$7,000, incentive award
9 not to exceed \$5,000 to Plaintiff, PAGA penalties of \$10,000 (of which 75% or \$7,500 will be paid
10 to the LWDA and 25% or \$2,500 will be paid to eligible Class Members), \$61,975 in individual
11 settlements previously paid to Class Members, and costs of administration not to exceed \$9,250.
12 Defendants shall pay the employer's share of payroll taxes on the portion of the Gross Settlement
13 Amount payable to Participating Class Members as wages, in addition to the Gross Settlement Fund.

14 8. The Court confirms Phoenix Settlement Administrators as the Settlement
15 Administrator. The Settlement Administrator shall prepare and submit to Class Counsel and
16 Defendants' Counsel a declaration attesting to the completion of the notice process as set forth in
17 the Settlement Agreement, including an explanation of efforts to resend any Class Notice returned
18 undeliverable and the total number of opt-outs and objections received before and after the deadline.

19 9. The Court directs Defendants to provide the Settlement Administrator with the
20 "Class List" for Class Members providing the following information: (1) names; (2) last known
21 home address and telephone numbers; (3) date of hire; (4) date of termination; (5) number of work
22 weeks; (6) amount of individual settlement; and (7) social security number. Defendants shall
23 provide the "Class List" as referenced herein, to the Settlement Administrator in accordance with
24 the procedure and deadlines set forth in the Settlement Agreement, by June 7, 2021.

25 10. The Settlement Administrator shall use the National Change of Address database
26 (U.S. Postal Service) to check for updated addresses for Class Members and shall then mail, via first
27 class U.S. mail, the Class Notice to Class Members as approved in paragraph 5 herein, in accordance
28 with the procedure and deadlines set forth in the Settlement Agreement, by June 21, 2021.

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1 11. The deadline by which Class Members may dispute the number of workweeks, opt-
2 out or object shall be forty-five (45) days from the date of mailing of the Class Notice or by August
3 21, 2021. Any Class Member who desires to be excluded from the Settlement must timely mail his
4 or her written request for exclusion in accordance with the Class Notice. All such persons who
5 properly and timely exclude themselves from the Settlement shall not be Class Members, and shall
6 have no rights with respect to the settlement, no interest in the settlement proceeds, and no standing
7 to object to the proposed settlement. However, Class Members who request exclusion but were
8 employed during the PAGA Period as defined in the Settlement Agreement will receive their pro
9 rata portion of the PAGA settlement upon final approval of the Settlement.

10 12. The deadline for filing objections to any of the terms of the Settlement shall be forty-
11 five (45) days from the date of mailing of the Class Notice or by August 21, 2021. Any Class
12 Member who wishes to object to the Settlement must either serve a written objection on the
13 Settlement Administrator or appear at the Final Approval hearing to object. The Settlement
14 Administrator will email a copy of any written objections to Class Counsel and counsel for
15 Defendants. Class Counsel will lodge a copy of the objection with the Court. The objection should
16 set forth, in a clear and concise manner, the factual and legal basis for the objection. ~~Any Class~~
17 ~~Member who fails to make his or her objection in the manner provided for in this Order shall be~~
18 ~~deemed to have waived such objection and shall forever be foreclosed from making any objection~~
19 ~~to or appeal of the fairness, reasonableness or adequacy of the Settlement as incorporated in the~~
20 ~~Settlement Agreement, or to the award of attorneys' fees, costs, or incentive award to class~~
21 ~~representative.~~

22 13. All papers filed in support of Final Approval, including supporting documents for
23 attorneys' fees and costs shall be filed on July 21, 2021.

24 14. Class Counsel and Counsel for Defendants shall file any responses to any written
25 objections submitted to the Court by September 10, 2021.

26 15. A final approval hearing shall be held with the Court on September 20, 2021 at 9:00
27 a.m., in Department 6 of the Superior Court of California County of Los Angeles, 312 N. Spring
28 St., Los Angeles, CA 90012, to determine (1) whether the proposed settlement is fair, reasonable,

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1 and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and
2 costs to award Class Counsel; and (3) the amount of incentive award to the Class Representative.
3 The Settlement Administrator shall provide Notice of any continuance of the final approval hearing
4 to any Class Members who have submitted an objection to the Settlement.

5 16. In the event the Settlement does not become effective in accordance with the terms
6 of the Settlement, or the Settlement is not finally approved, or is terminated, cancelled or fails to
7 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
8 and the Parties shall revert to their respective positions as of the commencement of the Action. The
9 Parties will be free to assert any claim or defense that could have been asserted at the outset of the
10 Action.

11 **IT IS SO ORDERED.**

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13 DATED: 5/27/21


14 Honorable Elihu M. Berle
15 Judge of the Superior Court
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EXHIBIT A

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NOTICE OF CLASS ACTION SETTLEMENT

**Superior Court of California, County of Los Angeles
Nunez v. Creative Dry Process, Inc. and United Wash & Dye, Inc. Case No. 20STCV15787**

This Notice provides important information about a proposed settlement in the class action lawsuit brought by Mirna Nunez ("Plaintiff") against Creative Dry Process, Inc. ("Creative") and United Wash & Dye, Inc. ("United") (collectively "Defendants"), and your right to participate in, exclude yourself from, or object to the settlement.

A. Summary of the Claims

Plaintiff contends that Defendants violated various provisions of the Labor Code by their alleged: (1) failure to pay Class Members wages, minimum wages, and overtime for all work hours at the correct regular and premiums rates; (2) failure to provide Class Members rest breaks or pay rest break premiums; (3) failure to provide Class Members meal breaks or pay meal break premiums; (4) failure to provide Class Members with complete and accurate wage statements; (5) failure to maintain required records for Class Members; (6) failure to timely pay Class Members all wages due during their employment and at termination; (7) unfair business practices; and (8) civil penalties under the Private Attorneys General Act ("PAGA") based on the foregoing alleged violations by Defendants. Plaintiff seeks to recover on behalf of herself and other Class Members, wages, missed meal and rest break premiums, expenses, penalties, interest, costs, and attorney's fees.

Defendants deny all of Plaintiff's claims and maintains that they have complied with all applicable laws. Specifically, Defendants contend that they correctly compensated Class Members; provided Class Members with proper meal and rest periods or paid required premiums for missed or non-compliant breaks; provided Class Members with compliant wage statements; maintained all required records for Class Members; and timely paid Class Members all wages owing during their employment and at the time of termination. Defendants further contend that for any purpose other than settlement, this action is not appropriate for class treatment.

The Court has not decided if Defendants violated any laws or if Plaintiff or any other employees are entitled to any money or other relief.

B. Why You Are Receiving This Notice

On May 24, 2021, the Superior Court of California, County of Los Angeles ("the Court") preliminarily approved a class action settlement of the lawsuit on behalf of all persons who have been, or currently are, employed by Defendants in California as non-exempt hourly employees ("Class Members") during the period April 23, 2016 through May 24, 2021 ("Class Period"). According to Defendants' records, you are a Class Member. Because you are a Class Member, you have the right to participate in, object to, or exclude yourself from the settlement. This Notice explains your legal rights and options with respect to the settlement.

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C. The Terms of the Settlement

Defendants have agreed to pay a maximum Gross Settlement Fund of \$265,000 in exchange for a release of the claims asserted by Plaintiff and Class Members in the lawsuit. The Gross Settlement Fund includes \$61,975 Defendants previously paid Class Members in individual settlements. Out of the Gross Settlement Fund, Class Counsel will be requesting the Court to award it up to \$88,333.33 in attorney's fees, up to \$9,000 in litigation costs, an Enhancement Award to Plaintiff Mirna Nunez of up to \$5,000.00, settlement administration costs of no more than \$9,250, and \$10,000 allocated to PAGA, 75 % of which, or \$7,500 will be paid to the Labor Workforce Development Agency ("LWDA") under PAGA. It is estimated that after deducting the attorney's fees, litigation costs, Enhancement Award, the amount allocated to PAGA, and administrative expenses from the Gross Settlement Fund, at least \$ _____ ("Net Settlement Fund") will be available for distribution to Class Members.

The Net Settlement Fund will be divided among participating Class Members as follows: To determine a participating Class Member's settlement payment, the Net Settlement Fund will be divided by the total number of weeks worked by all participating Class Members as non-exempt employees in California during the Class Period, multiplied by the number of weeks worked by that Class Member as a non-exempt employee in California. If you previously received an individual settlement payment from Defendants, you will be paid an additional \$50.00 from the Net Settlement Fund, or the difference between your prior individual settlement payment and your pro rata amount calculated under the formula described in this Paragraph, whichever is greater. Unless you exclude yourself from the settlement as explained below, you will receive a settlement payment.

In addition, \$2,500 from the amount allocated to PAGA will be paid to Class Members who were employed with Defendants as non-exempt employees in California during the period April 23, 2019 to May 24, 2021 ("PAGA Period"). If you worked during the PAGA Period, to determine your share of the PAGA settlement, the PAGA settlement will be divided by the total number of weeks worked by all eligible Class Members as non-exempt employees in California during the PAGA Period, multiplied by the number of weeks worked by you as a non-exempt employee in California during the PAGA Period. You will receive your portion for the PAGA settlement even if you request exclusion from the settlement.

D. Your Options

You have three options: (1) participate in the settlement and not object to the settlement; (2) participate in the settlement and object to the settlement; or (3) request exclusion from the settlement.

If you choose to participate in the settlement (i.e., remain in the Class), you may also object to the settlement, as explained below. If you remain in the Class, you will be represented by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the settlement. If you remain in the Class, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

If you request exclusion from the settlement, you cannot also object to the settlement, because the settlement no longer affects you.

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1. Participate in the Settlement

Under the settlement, you will receive a settlement payment unless you request exclusion from the settlement. According to Defendants' records you worked ____ weeks during the Class Period as a non-exempt employee. As such, your settlement payment is estimated to be \$_____.

Even if you request exclusion, you will receive a portion of the PAGA settlement if you worked during the PAGA Period. According to Defendants' records, you worked ____ weeks during the PAGA Period as a non-exempt employee in California. As such, your share of the PAGA settlement is estimated to be \$_____.

If you believe that the number of weeks worked is incorrect, you should provide the Settlement Administrator with an explanation, along with any documentation relating to your disagreement by no later than August 21, 2021. If there is a dispute about the number of weeks you worked, the Settlement Administrator will review the Defendants' records and your records to attempt to resolve the dispute.

You should send your explanation and documentation regarding any dispute over the number of weeks you worked as a Class Member to the Settlement Administrator at the following address:

Creative Dry Process Class Action Settlement Administrator
c/o _____
P.O. Box _____
_____, _____
() ____ - ____

Settlement checks will be mailed to Settlement Class Members, so if your address changes, you should inform the Settlement Administrator of the change. Your settlement payment will be mailed to you some time after the Court grants final approval of the settlement at the Final Approval Hearing.

Twenty percent (20 %) of your settlement payment is allocated to wages, and taxes will be withheld from that portion and will be reported on a W-2. The remaining eighty percent (80 %) of your settlement payment is allocated to non-wages and interest. No taxes will be withheld from this portion and will be reported on a 1099. If you received a portion of the PAGA settlement, no taxes will be withheld from this portion and will be reported on a 1099. Class Members are responsible for the proper income tax treatment of their settlement payments. The Settlement Administrator, Defendants and their counsel, and Plaintiff and Class Counsel cannot and are not providing tax advice concerning the tax consequences and treatment of any settlement payment received by Class Members.

2. Object to the Settlement

If you do not exclude yourself from the settlement, you have the right to object to the settlement. To do so, you must mail to the Settlement Administrator at the address noted above, your objection in writing. To be valid, your objection must be mailed to Settlement Administrator and postmarked no later than August 21, 2021. Class Counsel will provide the Court with your objection prior to the final approval hearing. You can also hire an attorney at your own expense to represent you in your objection.

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An objection must be signed by you, it must reference case number 20STCV15787, and it must state all of the following: (1) your full name; (2) your dates of employment with Defendants; (3) the grounds for the objection; (4) if the you intend to appear at the final approval hearing; and (5) include any legal briefs, papers or memoranda you propose to submit to the Court in support of your objection. If you fail to make your objection in the manner specified above, you still have the right to appear in Court at the Final Approval Hearing to state your objections. If you wish to appear for the Final Approval Hearing, you must adhere to the Court's current social distancing procedures for attendance at hearings and review of court files, a link of which will be found at the Settlement Administrator's Website ----. If you do not submit a written objection or appear in Court to object at the Final Approval Hearing, you will be deemed to have waived your right to object and shall be foreclosed from making any objections to the settlement whether by appeal or otherwise. Class Members may appear remotely for the Final Approval Hearing and should contact the court clerk for Department 6 at (213) 310-7006 for instructions on how to appear remotely.

3. Exclude Yourself from the Settlement

If you wish to exclude yourself from the settlement, you must mail to the Settlement Administrator a valid request to be excluded from the settlement. The request to be excluded from the settlement should state, in effect, the following: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN THE CLASS ACTION LAWSUIT. I UNDERSTAND BY REQUESTING EXCLUSION FROM THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE LAWSUIT." The request for exclusion from the settlement must be postmarked no later than August 21, 2021, and mailed to the Settlement Administrator at the address noted above. If you exclude yourself from the settlement, you will not be entitled to recover any settlement payment except your share of the PAGA settlement if you worked during the PAGA Period. You will also not be allowed to object to the settlement but you will retain the right to bring any claims you may have against Defendants.

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E. Release of Claims

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by the Settlement Agreement, each Class Member who has not timely requested exclusion from the Settlement, fully releases and discharges Defendants, and all of their past, present, and future parent companies, subsidiaries, affiliates, divisions, joint ventures, agents, management companies, and all of their respective employees, members, officers, directors, partners, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns and insurers (collectively “Released Parties”), from and all claims, demands, rights, liabilities, actions, grievances, demands for arbitration, and causes of action, of every nature and description, that were or could have been asserted based on the facts alleged in the FAC, including but not limited to, any state or federal claims (including without limitation claims under the Fair Labor Standards Act (“FLSA”)), relating to the failure to pay wages, failure to pay minimum wages, failure to pay overtime, failure to provide meal or rest breaks, failure to provide accurate and complete wage statements, failure to keep records, unfair competition, PAGA penalties (PAGA penalties only for those violations set forth in the Notice provided to Defendants and the LWDA on September 29, 2020, including (1) Failure to Pay for All Time Worked at Correct Rates of Pay, Including Minimum Wages, Straight Time Wages, and Overtime Compensation; (2) Failure to Provide Meal Periods and Pay Meal Period Premiums; (3) Failure to Authorize and Permit Rest Periods and Pay Rest Period Premiums; (4) Failure to Timely Pay Wages During Employment; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Maintain Accurate Records; and (7) Failure to Pay All Wages Upon Termination of Employment), waiting time penalties, interest, attorney’s fees, or any other alleged known or unknown wage and hour violations that were alleged or could reasonably have been alleged based on arising out of the acts, facts, transactions, occurrences, representations, or omissions that were asserted in the Lawsuit (“Released Claims”). The cashing of the settlement check by a Settlement Class Member will be considered a consent and opt-in to the settlement of all related federal wage-hour claims under the FLSA, and each Settlement Class Member who cashes a settlement check will waive his or her rights to bring related claims under the FLSA during the Class Period. Any Class Member who receives a payment under PAGA pursuant to Paragraph 18 and who opts out of the Settlement is only bound by the release of PAGA claims.

F. Final Approval Hearing

The Court has scheduled a Final Approval Hearing for September 20, 2021, at 9:00 a.m. in Department 6 of the Superior Court of California, County of Los Angeles, located at 312 N. Spring Street, Los Angeles, CA 90012. At the Final Approval Hearing, the Court will decide whether to grant final approval of the settlement. The Court will also rule on the application by Plaintiff for an award of attorney’s fees, litigation costs, administration costs, payment to the LWDA, and an Enhancement Award to Plaintiff. You have the right to attend the Final Approval Hearing and address the Court. You also have the right to retain an attorney at your own expense to speak on your behalf. You are not required to attend the Final Approval Hearing.

G. Where to Get More Information

If you want more information about the lawsuit or the settlement, you can contact Class Counsel or any other advisor of your choice. You can also view and obtain copies of lawsuit and related documents in the Court’s file by going to the Clerk’s office. DO NOT CONTACT THE

JUDGE OR JUDGE'S COURTROOM CLERK. Below is the contact information for the lawyers representing the Parties and for the Clerk of the Court.

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The Court

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BY ORDER OF THE COURT ENTERED ON _____ 202__.

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