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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11

12 MACARIO GONZALEZ, individually, and on
13 behalf of all others similarly situated,

14 *Plaintiff,*

15 vs.

16 METCON TI, INC., et al.,

17 *Defendants.*

Case No.: RG19015589

Hon. Michael M. Markman

CLASS ACTION

[AMENDED PROPOSED] ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT

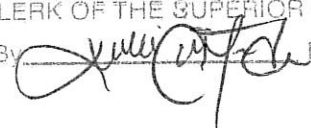
Date: October 26, 2021
Time: 3:00 p.m.
Courtroom: Dept. 23
Judge: Hon. Michael M. Markman

Action Filed: January 4, 2019
Trial Date: Not Set

FILED
ALAMEDA COUNTY

OCT 26 2021

CLERK OF THE SUPERIOR COURT

By  Deputy

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 Plaintiff MACARIO GONZALEZ ("Plaintiff") and Defendant METCON TI, INC.
3 ("Defendant") have reached terms of settlement for a putative class action.

4 Plaintiff has filed a motion for final approval of a class action settlement of the claims asserted
5 against Defendant in this action, memorialized in the JOINT STIPULATION OF CLASS ACTION
6 SETTLEMENT (*see* Declaration of H. Scott Leviant In Support of Plaintiff's Motion for Preliminary
7 Approval of Class Action Settlement ["Leviant Decl.," at Exh. 1). The JOINT STIPULATION OF
8 CLASS ACTION SETTLEMENT is referred to herein as the "Agreement" or "Settlement."

9 After reviewing the Agreement, the Notice process, and other related documents, and having
10 heard the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

11 1. The Court finds that the terms of the proposed class action Settlement are fair,
12 reasonable, and adequate, pursuant to California Code of Civil Procedure § 382. In granting final
13 approval of the class action settlement the Court has considered the factors identified in *Dunk v. Ford*
14 *Motor Co.*, 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v. Apple Computer, Inc.*, 91 Cal.
15 App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706 (2006).

16 2. The Court finds that the Settlement has been reached as a result of intensive, serious and
17 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
18 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate
19 their respective positions. The Court also finds that settlement at this time will avoid additional
20 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
21 of the action. The Court finds that the risks of further prosecution are substantial.

22 3. The parties' Settlement is granted final approval as it meets the criteria for preliminary
23 settlement approval. The Settlement falls within the range of reasonableness and appears to be
24 presumptively valid, subject only to any objections that may be raised at the final fairness hearing. The
25 Settlement Class meets the requirements for conditional certification for settlement purposes only under
26 Code of Civil Procedure § 382.

27 4. The Class Notice provided to the Settlement Class conforms with the requirements of
28 Code of Civil Procedure § 382, Civil Code § 1781, Rules of Court 3.766 and 3.769, the California and

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

6 5. The following persons are certified as Class Members solely for the purpose of entering
7 a settlement in this matter:

8 All persons employed by Defendant in hourly paid or non-exempt positions in
9 California at any time during the Class Period. (the Class Period is January 4, 2015
through December 4, 2020). (Settlement, ¶ 3.)

10 6. The Court also defines the following "PAGA Employees" impacted by the proposed
11 settlement of PAGA claims:

12 All Class Members employed at any time during the period of January 4, 2018
13 through December 4, 2020 (The period of January 4, 2018 through December 4, 2020 is
the "PAGA Period.")

14 7. Plaintiff MACARIO GONZALEZ is appointed the Class Representative. The Court
15 finds Plaintiff's counsel are adequate, as they are experienced in wage and hour class action litigation
16 and have no conflicts of interest with absent Settlement Class Members, and that they adequately
17 represented the interests of absent class members in the Litigation. Kane Moon, H. Scott Leviant, and
18 Lilit Tunyan of Moon & Yang, APC, are appointed Class Counsel.

19 8. The Court appoints Phoenix Settlement Administrators to act as the Settlement
20 Administrator, pursuant to the terms set forth in the Agreement.

21 9. One Settlement Class Member requested exclusion from the Settlement Class. This
22 Settlement Class Member is Samuel Merrill. All other Settlement Class Members are bound by the Final
23 Approval Order and Judgment in the Action.

24 10. Upon entry of this Final Approval Order and Judgment, funding of the Settlement and
25 compensation to the Settlement Class Members shall be implemented pursuant to the terms of the
26 Settlement.

27 11. In addition to any recovery that the Plaintiff may receive under the Settlement as a
28 Settlement Class Member, and in recognition of the Plaintiff's efforts on behalf of the Settlement Class,

1 the Court hereby approves the payment of an enhancement award to Plaintiff MACARIO GONZALEZ
2 in the amount of \$5,000 / \$_____.

3 12. The Court approves the payment of attorneys' fees to Class Counsel in the amount of
4 \$100,000 / \$_____. Litigation expenses are approved by the Court in the following
5 amount: \$12,308.39 is awarded to Moon & Yang, APC.

6 13. The Court approves and orders payment in the amount of \$5,000.00 to Phoenix
7 Settlement Administrators for performance of its services as the Settlement Administrator, as set forth
8 in the Notice to the Class.

9 14. Pursuant to Code Civ. Proc. § 384, no later than July 19, 2022, the parties shall submit a
10 report to the court specifying the total amount paid to class members, and the residual of unclaimed funds
11 that will be paid, pursuant to the parties' stipulation at the hearing of the Motion for Final Approval, to
12 the California State Bar's Justice Gap Fund, care of The State Bar of California, 180 Howard St., San
13 Francisco, CA 94105, along with a proposed amended judgment. No later than 5 days after receipt of
14 notice of the entry of the amended judgment, the parties shall submit the amended judgment to the
15 Judicial Council, pursuant to Code Civ. Proc. § 384.5, and shall file a proof of service with this court
16 confirming this.

17 15. A compliance hearing is set for August 2, 2022, at 3:00 p.m.

18 16. The Court approves and orders payment in the amount of \$15,000.00 to the Labor and
19 Workforce Development Agency in compromise of claims under the Labor Code Private Attorneys
20 General Act of 2004 (Labor Code § 2698 *et seq.*).

21 17. Once Defendant fully funds the Settlement by paying the Final Settlement Amount, due
22 November 23, 2021, Plaintiff and the Settlement Class Members, shall have, by operation of this Final
23 Approval Order, fully, finally and forever released, relinquished, and discharged Defendant from the
24 Released Claims described in the Settlement.


25 ///

1 18. In accordance with California Rule of Court 3.771(b), the Parties are ordered to give notice
2 of this final Order to all Settlement Class Members by posting the Order and subsequent Judgment for 90
3 days on the Settlement Administrator's website.

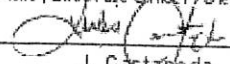
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5 **IT IS SO ORDERED.**

6
7 Dated: _____

10/24/21

8 
Hon. Michael M. Markman
ALAMEDA COUNTY SUPERIOR COURT JUDGE



<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</p>		<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612</p>		<p align="center">FILED Superior Court of California County of Alameda 10/28/2021 Chad Finke, Executive Officer / Clerk of the Court By:  Deputy J. Castaneda</p>
<p>PLAINTIFF/PETITIONER: Macario Gonzalez</p>		
<p>DEFENDANT/RESPONDENT: Metcon TI, Inc.</p>		
<p align="center">CERTIFICATE OF MAILING</p>		<p>CASE NUMBER: RG19015589</p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Order Granting Final Approval of Class Action Settlement upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Daniel F. Pyne
Hopkins and Carley
70 S. First Street
San Jose, CA 95114-

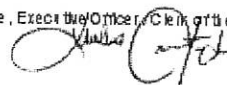
Kane Moon
Moon & Yang APC
1055 W 7th St.
#1880
Los Angeles, CA 90017-

Dated: 10/28/2021

Chad Finke, Executive Officer / Clerk of the Court

By:

Chad Finke, Executive Officer / Clerk of the Court



J. Castaneda, Deputy Clerk

CERTIFICATE OF MAILING

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
René C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

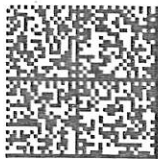
U.S. POSTAGE



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