

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—
GENERAL

Case No. 5:21-cv-01490-JWH-SP Date January 10, 2023

Title *Francisco Hernandez v. Burrtec Waste and Recycling Services, LLC, et. al.*

Present: The Honorable JOHN W. HOLCOMB, UNITED STATES DISTRICT JUDGE

Clarissa Lara

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

Proceedings: ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, GRANTING APPROVAL OF CLASS NOTICE, AND SETTING OF FINAL APPROVAL HEARING (IN CHAMBERS)

Before the Court is the motion of Plaintiff Francisco Hernandez, individually and on behalf of all others similarly situated, for approval of a class action settlement with Defendant Burrtec Waste & Recycling Services, LLC.¹ The Court finds this matter appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the unopposed motion, the Court orders that the Motion is **GRANTED**, for the reasons set forth herein.

The Court, having reviewed the Motion for Preliminary Approval of Class Action Settlement; the Memorandum Points and Authorities in support thereof; the Declarations of James R. Hawkins and Francisco Hernandez; the Class Action Settlement Agreement (the “Settlement Agreement”); and the Notice of Class Action Settlement, and in recognition of the Court’s duty (a) to make a preliminary determination as to the reasonableness of any proposed class action settlement and,

¹ Pl.’s Mot. for Settlement Approval of Class Action Settlement (the “Motion”) [ECF No. 27].

if preliminarily determined to be reasonable; (b) to ensure that proper notice is provided to Settlement Class Members in accordance with due process requirements; and (c) to conduct a final approval hearing as to the good faith, fairness, adequacy, and reasonableness of any proposed settlement, hereby makes the following **FINDINGS**:

1. The Court finds, on a preliminary basis, that the Settlement Agreement attached as Exhibit 1 to the Hawkins Declaration and incorporated in full by this reference and made a part of this Order Granting Preliminary Approval appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court notes that Defendant Burrtec agreed to pay the Maximum Settlement Amount of \$83,300.00 in full satisfaction of the claims as more specifically described in the Settlement Agreement.

2. The Court also finds that, on a preliminary basis, the Settlement is fair and reasonable to all members of the Settlement Class when balanced against the probable outcome of further litigation relating to maintaining class certification, liability and damages issues at trial, and potential appeals of rulings. The Court further finds that sufficient investigation, research, litigation, and formal and informal discovery have been conducted such that Counsel for the Parties are able reasonably to evaluate their respective positions. The Court further finds that settlement at this time will avoid substantial costs, delay, and risks that would be presented by the further prosecution of the litigation and that the proposed Settlement has been reached as the result of intensive, informed, and non-collusive and arms'-length negotiations between the Parties. Accordingly, the Motion for preliminary approval of the class action settlement is **GRANTED**.

3. The Court also accepts and incorporates the Settlement Agreement and confirms the Class defined as follows:

All of Defendant's employees or job applicants in the United States who authorized or were the subject of a consumer report or background check procured, or caused to be procured, for employment purposes by Defendant, or its affiliates, from May 21, 2016, through the date of preliminary approval.

4. The Court confirms Plaintiff Francisco Hernandez as Class Representative.

5. The Court confirms James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC as Class Counsel.

6. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator to administrate the Settlement pursuant to the terms of the Settlement Agreement.

7. The Court hereby **GRANTS** Plaintiff leave to file the First Amended Complaint attached as Exhibit D to the Settlement Agreement.

8. The Court finds that the Notice of Proposed Class Action Settlement (the "Class Notice") attached as Exhibit A to the Settlement Agreement advises the Settlement Class of the pendency and nature of the class and representative action; of the proposed Settlement terms; of the preliminary Court approval of the proposed Settlement; of the automatic payment of a proportionate share of the settlement if the Class Member does not request to be excluded; of the released claims; of the estimated amount each may expect to receive pursuant to the proposed Settlement as a Class Member; of objection timing and procedures; and of opt-out timing and procedures for Class Members only. The Court further finds that the Class Notice documents fairly and adequately advise Settlement Class Members of the terms of the proposed Settlement and the benefits available to Settlement Class Members thereunder and of the final approval hearing date, time, and place and the right to file documentation in support of or in opposition to the Settlement and to appear in connection with said hearing. The Court further finds that the Class Notice clearly comports with all constitutional requirements including those of due process. Accordingly, the Court **APPROVES** notice of proposed class action settlement as an attached exhibit to the settlement agreement.

9. The Court finds that the mailing to the present and last known address of the members of the Settlement Class, with safeguards to perform reasonable skip traces of returned Class Notices, constitutes an effective method of notifying Class Members of their rights with respect to the Action and Settlement.

For the foregoing reasons, the Court hereby **ORDERS** as follows:

10. With respect to notice:

(a) within 14 calendar days of the entry of the Preliminary Approval Order, Defendant is **DIRECTED** to forward to the Settlement

Administrator the Class Data as provided for by the terms set forth in the Settlement Agreement;

(b) within 21 calendar days of receipt of the Class List, the Settlement Administrator is **DIRECTED** to mail to each Settlement Class Member, by first class, postage pre-paid, the Class Notice; and

(c) all mailings shall be made to the present or last known mailing address of the Settlement Class Members based upon Burrtec's records, as well as addresses that may be updated and located by the Settlement Administrator who will conduct reasonable address searches in cases of returned mail as set forth in the Settlement Agreement.

The Court finds and so **ORDERS** that the mailing of the Class Notices as set forth in this paragraph is the best means practicable by which to reach Class Members and is reasonable and adequate pursuant to all constitutional and statutory requirements including all due process requirements.

11. Requests for Exclusion by Class Members only from the Settlement must be faxed or mailed to the Settlement Administrator and confirmed faxed or postmarked no later than 60 calendar days from the initial mailing or re-mailing of the Class Notice to the Settlement Class (the "Response Deadline"). If the Response Deadline falls on a Saturday or Federal Holiday, then the Response Deadline will be extended to the next day which the U.S. Postal Service is open.

12. Objections to Settlement must be signed by the Class Member and provide the following:

(a) the objecting person's full name, address, and telephone number;

(b) the words "Notice of Objection" or "Formal Objection;"

(c) a description, in clear and concise terms, of the legal and factual arguments supporting the objection;

(d) a list identifying the witnesses that the objector may call to testify at the Final Approval hearing; and

(e) true and correct copies of any exhibits that the objector intends to offer at the Final Approval hearing.

All papers in support of the objections must be sent as described in the Settlement Agreement and Class Notice and postmarked no later than 60 calendar days from the initial mailing or re-mailing of the Notice Packet to the Class (the “Response Deadline”). If the Response Deadline falls on a Saturday or Federal Holiday, then the Response Deadline will be extended to the next day which the U.S. Postal Service is open.

13. The final approval hearing shall be conducted at 9:00 a.m. on August 8, 2023, in the United States District Court for the Central District of California in Courtroom 9D, on the 9th Floor of the Ronald Reagan Federal Building and United States Courthouse at 411 W. Fourth Street Santa Ana, California:

(a) to consider the fairness, adequacy, and reasonableness of the proposed Settlement preliminarily approved by this Order of Preliminary Approval; and

(b) to consider the application of Class Counsel for:

- i. an award of reasonable attorneys’ fees and litigation expenses;
- ii. Class Representative Enhancement Payment; and
- iii. reimbursement of the Settlement Administration expenses incurred.

14. The Court expressly reserves the right to adjourn or continue the final approval hearing from time-to-time without further notice to Settlement Class Members, except that notice of a continuance shall be provided to Settlement Class Members who may submit objections.

IT IS SO ORDERED.