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individually and on behalf of and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ROBERTO RODRIGUEZ, individually and
on behalf of and all others similarly situated;

Plaintiffs,

vs.

ND INDUSTRIES, INC., a Michigan
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 19STCV38096

ASSIGNED FOR ALL PURPOSES TO:

The Honorable David S. Cunningham

Department SS11

CLASS AND REPRESENTATIVE ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Date: June 23, 2022

Time: 10:00 a.m.

Dept.: SS11

Judge: David S. Cunningham

Complaint filed: October 24, 2019

Trial date: Not set

FILED
Superior Court of California
County of Los Angeles

06/24/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. Lewis Deputy

1 The motion of Plaintiff Roberto Rodriguez (“Plaintiff”) for an order finally approving
2 the Amended Class Action Settlement Agreement (“Settlement Agreement”) with Defendant
3 ND Industries (“Defendant”), for attorneys’ fees and costs, service payment, and for the fees
4 and expenses of the Settlement Administrator came on for hearing on June 23, 2022 before the
5 Honorable David S. Cunningham.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used in this Order shall have the same meaning as in the Settlement
11 Agreement.

12 2. This Court has jurisdiction over the subject matter of this litigation pending
13 before the California Superior Court for the County of Los Angeles, and over all Parties to this
14 litigation, including the Class.

15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of \$465,000 and the terms set
17 forth in the Settlement Agreement are fair, reasonable, and adequate.

18 4. The Court further finds that the Settlement was the result of arm’s-length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. The amount of the Settlement, the
21 significant risks relating to certification, liability, and damages, and the assistance of an
22 experienced mediator in the settlement process, among other factors, support the Court’s
23 conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

25 5. On February 25, 2022, after reviewing briefing and declarations of counsel,
26 Plaintiff, and the Settlement Administrator, the Court granted preliminary approval of the
27 Settlement. At that time, the Court also approved conditional certification of the Class for
28 settlement purposes only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Class Notice and
3 Change of Address form, translated into Spanish, and mailed together with a pre-printed return
4 envelope (“Notice Packet”) was mailed by first class mail to Class Members at their last known
5 addresses on March 15, 2022. Mailing the Notice Packets to their last known addresses was the
6 best notice practicable under the circumstances and was reasonably calculated to communicate
7 actual notice of the litigation and the proposed Settlement to the Class. The Class Notice fully
8 and accurately informed the Class Members of all material elements of the proposed Settlement
9 and of their opportunity to dispute the information on which their Settlement Share would be
10 calculated, to object or to seek exclusion from the Settlement; was valid, due, and sufficient
11 notice to all Class Members; and complied fully with the laws of the State of California and
12 due process. The Class Notice fairly and adequately described the Settlement and provided
13 Class Members adequate instructions and means to obtain additional information.

14 7. The deadline for opting out or submitting written objections to the Settlement
15 was May 14, 2022, 60 days from the initial mailing of the Notice Packets. There was an
16 adequate interval between notice and the deadline for Class Members to choose what to do and
17 act on their decision. A full opportunity was afforded to Class Members to participate in this
18 hearing, and all Class Members and other persons wishing to be heard have been heard. Class
19 Members also had a full and fair opportunity to exclude themselves from the proposed
20 Settlement and Class. Accordingly, the Court determines all Class Members who did not timely
21 and properly submit a request for exclusion are bound by the Settlement, and this Final
22 Approval Order and Judgment.

23 **Fairness of Settlement**

24 8. The Settlement Agreement is entitled to a presumption of fairness. *Dunk v. Ford*
25 *Motor Co.* 48 Cal.App.4th 1794, 1801 (1996).

26 a. The settlement was reached through arm’s-length bargaining between the
27 parties during an all-day mediation before experienced wage and hour mediator Lou Marlin.
28 There has been no collusion between the Parties in reaching the proposed settlement.

1 b. Plaintiff's investigation and discovery have been sufficient to allow the
2 Court and counsel to act intelligently.

3 c. Counsel for the Parties are experienced in similar employment class
4 action litigation. All counsel recommended approval of the Settlement Agreement.

5 d. There were no objectors or requests for exclusion received.

6 e. The participation rate was high and 85 Class Members will be mailed a
7 settlement payment, representing 100% of the overall Class.

8 9. The consideration provided to Class Members under the terms of the Settlement
9 Agreement is fair, reasonable and adequate and in the best interests of the Class Members.

10 **Class Counsel's Attorneys' Fees and Costs**

11 10. An award of \$155,000 for attorneys' fees, representing one-third of the Gross
12 Settlement Amount, and \$14,000 for litigation costs and expenses, is reasonable in light of the
13 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
14 achieved for the Class.

15 **Class Representative Service Payment**

16 11. The Settlement Agreement provides for a Class Representative Service Payment
17 of not more than \$7,000 to Plaintiff, subject to the Court's approval. The Court finds that Class
18 Representative Service Payment in this amount to the Plaintiff is reasonable in light of the risks
19 and burdens undertaken by the Plaintiff in this litigation, for the time and effort in bringing and
20 prosecuting this matter on behalf of the Class, and for providing a general release.

21 **Settlement Administration Expenses**

22 12. The Settlement Administrator shall calculate and administer the payment to be
23 made to Participating Class Members, transmit payment for attorneys' fees and costs to Class
24 Counsel, transmit the Class Representative Service Payment to Plaintiff, distribute the LWDA
25 Payment, issue any required tax reporting forms, calculate withholdings and perform the
26 remaining duties set forth in the Settlement Agreement. The Settlement Administrator has
27 documented \$6,000 in fees and expenses, and this amount is reasonable in light of the work
28 performed by the Settlement Administrator.

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1 21. The Settlement Agreement and this Settlement are not an admission by
2 Defendant, nor is this Final Approval Order and Judgment a finding of any wrongdoing by
3 Defendant, or that this Action is appropriate for class treatment other than for settlement
4 purposes. Neither this Final Approval Order and Judgment, the Settlement Agreement, nor any
5 document referred to in the Settlement Agreement, nor any action taken to carry out the
6 Settlement Agreement is, or may be construed as an admission by or against Defendant of any
7 fault, wrongdoing or liability. Entering into or carrying out the Settlement Agreement, and any
8 negotiations or related proceedings, shall not be construed as, or deemed to be evidence of, an
9 admission or concession by Defendant. Notwithstanding these restrictions, Defendant may file
10 in the Action, or in any other proceeding, this Final Approval Order and Judgment, the
11 Settlement Agreement, or any other papers and records on file in the Action as evidence of the
12 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of
13 claim or issue preclusion or similar defense as to the Released Class Claims.

14 22. Notice of entry of this Final Approval Order and Judgment shall be given to all
15 Parties by Class Counsel. The Final Approval Order and Judgment shall be posted on the
16 Administrator's website, as set forth in the Class Notice. It shall not be necessary to send notice
17 of entry of this Final Approval Order and Judgment to individual Class Members.

18 **IT IS ORDERED, ADJUDICATED AND DECREED THAT:**

19 23. Except as set forth in the Settlement Agreement and this Final Approval Order
20 and Judgment, Plaintiff, and all members of the Class, shall take nothing in the Action.

21 24. The Court shall retain jurisdiction to construe, interpret, implement and enforce
22 the Settlement Agreement, to hear and resolve any contested challenge to a claim for settlement
23 benefits, and to supervise and adjudicate any dispute arising from or in connection with the
24 distribution of settlement benefits.

25 25. Each party shall bear their own attorneys' fees and costs, except as otherwise
26 provided in the Settlement Agreement and in this Final Approval Order and Judgment.

27 26. Each Class Member who has not returned a valid and timely Request for
28 Exclusion has released the "Released Class Claims" against Defendant and "Released Parties."

1 27. “Released Class Claims” means as of the date Defendant funds the Gross
2 Settlement, all Participating Class Members will fully and finally release Defendant and the
3 Released Parties from all claims alleged in the operative complaint for 1) failure to pay
4 minimum, regular and overtime wages, Labor Code §§1194, 1194.2, IWC Wage Order No. 1-
5 2001; 2) meal period violations, Labor Code §§226.7, 512, IWC Wage Order No. 1-2001; 3)
6 rest period violations, Labor Code §226.7, IWC Wage Order No. 1-2001; 4) failure to provide
7 accurate itemized wage statements, Labor Code §226(a); 5) waiting time penalties, Labor Code
8 §§201-203; 6) unfair business practices, Business & Professions Code §§17200, et seq. The
9 release of these claims shall be effective from October 24, 2015 to June 1, 2021. The Released
10 Class Claims expressly exclude all other claims, including claims for vested benefits, wrongful
11 termination, unemployment insurance, disability, social security, workers’ compensation, and
12 class claims outside of the Class Period. Civil penalties under PAGA, Labor Code §§2698, et
13 seq., for failure to pay all wages, failure to provide meal periods, failure to provide rest periods,
14 failure to provide accurate itemized wage statements, and final wages, will be released whether
15 or not a Class Member excludes themselves.

16 28. “Released Parties” means, Defendant, together with all its insurers, parents,
17 affiliates, subsidiaries, successors, assigns, and any individual or entity that could be jointly
18 liable with them as to any of the Released Class Claims.

19 29. Plaintiff has generally released all claims, known and unknown, as set forth in
20 the Settlement Agreement.

21 **IT IS SO ORDERED.**

22
23 Dated: 06/24/2022



24
25 HON. DAVID S. CUNNINGHAM
26 JUDGE, SUPERIOR COURT OF CALIFORNIA
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