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LAW AND MOTION DEPT.53/54 SUPERIOR COURT OF CALIFORNIA SACRAMENTO COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

KIJANA WICKER, individually, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA");

Plaintiff,

v.

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ASC PROFILES LLC dba ASC BUILDING PRODUCTS, ASC STEEL DECK, AND AEP SPAN, a Delaware limited liability company; BLUESCOPE STEEL AMERICAS, LLC, a Delaware limited liability company; BLUESCOPE BUILDINGS NORTH AMERICA, INC., a Delaware corporation; BLUESCOPE STEEL LIMITED, an unknown business entity; NS BLUESCOPE COATED PRODUCTS – NORTH AMERICA, a Delaware limited liability company; STEELSCAPE, LLC, a California limited liability company; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 34-2019-00270803-CU-OE-GDS

Honorable Shama H. Mesiwala Department 53

CLASS ACTION

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

[Reservation ID: 2581207]

Hearing Date:

September 14, 2021

Hearing Time:

1:30 p.m.

Hearing Place:

Department 53

Complaint Filed:

December 6, 2019

FAC Filed:

February 14, 2020

SAC Filed:

June 4, 2021

Trial Date:

None Set



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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Motion for Preliminary Approval of Class Action Settlement came before this Court, the Honorable Shama H. Mesiwala presiding, on September 14, 2021. The Court having considered the papers submitted in support of the Motion, issued a tentative ruling and now adopts the tentative ruling and HEREBY ORDERS THE FOLLOWING:

Plaintiff Kihana Wicker's unopposed motion for preliminary approval is granted. (Code of Civil Procedure § 382, California Rules of Court, Rule 3.769).

The trial court has broad discretion to determine whether a proposed settlement in a class action is fair. (Rebney v. Wells Fargo Bank (1990) 220 Cal. App.3rd 1117, 1138.).

Newberg on Class Actions (4th Ed.), the authoritative treatise on class actions, discusses the process for approving the settlement of a class action. At § 11.24, "Procedure for Submitting Class Settlement for Approval," Newberg describes the review at the preliminary stage as the submission by the parties of the essential terms of the agreement for informal review of the settlement papers by the Court. In reviewing a request for preliminary approval of a class action settlement, the Court's task is to determine whether the proposed settlement is within the "range of reasonableness" that would warrant sending out a notice of the settlement and giving the class members the opportunity to object. (Newberg on Class Actions, 4th. Ed. (2002) § 11.25). In making its fairness determination, the Court should consider the relevant factors, such as the strength of the Plaintiffs' case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801.) Preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (See, e.g. Kullar v. Footlocker Retail Inc. (2008) 168 Cal.App.4th 116.) Generally, the Court will presume the absence of fraud or collusion in the negotiation of the settlement unless evidence to the contrary is offered. In short, there is a presumption that negotiations were conducted in good faith. (Newberg, supra, at §11.51.)

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The Court finds that the proposed settlement, reached after mediation, appears not to be the product of fraud or overreaching and appears to be fair, reasonable, adequate and in the best interests of the members of the putative class and thereby meets the criteria for preliminary approval. (Nordstrom Com. Cases (2010) 186 Cal.App.4th 576, 581.)

In this wage and hour action, Plaintiff allege, among other things, that Defendants ASC Profiles, LLC, et al, committed wage and hour violations by failing to pay overtime, failing to pay meal and rest break premiums, failing to pay minimum wages, failing to timely pay final wages, failing to provide compliant wage statements, failing to keep payroll records, failing to reimburse business expenses, and failing to pay sick leave. Plaintiff also allege that Defendants violated Business and Professions Code § 17200. Plaintiff also seeks penalties pursuant to PAGA.

According to the proposed settlement reached after mediation, Defendants have agreed to pay a gross settlement amount of \$5,000,000 to all current and former nonexempt employees of Defendants in California from October 30, 2015 through June 30, 2021. Payments will be allocated to class members on a pro rata basis based on the number of weeks a class member worked. There are approximately 550 class members. The settlement also includes a \$10,000 service award to the named Plaintiff. The settlement allows Plaintiff's counsel to seek fees up to \$1,900,000 (38% of the gross settlement) and up \$30,000 in costs, all of which will be deducted from the gross settlement amount. The settlement also provides that class administration fees of up to \$15,000 will be deducted from the gross settlement amount. \$200,000 is allocated to the PAGA portion of the settlement with 75% (\$150,000) being paid to the LWDA and 25% (\$50,000) to aggrieved employees as defined in the settlement.

The Court therefore preliminarily approves the settlement and proposed notice, provisionally certifies the class for settlement purposes, confirms Plaintiff as the class representative, and Plaintiff's counsel as class counsel.

The Court has in several other cases required the following Notice to Class be included with regard to Additional Information and is ordering that such language be included in this notice of class settlement.

Dated:

Notice to Class

The Court will require the creation, by class counsel, of a website for this settlement in which all documents filed with the Court will be accessible by the class members at the listed and stated website address. The proposed notice to class currently states that class members may access the case information only at the main courthouse. While it is true that the only way to access the case information at no fee is to come to the main court house and use the kiosks, it is also possible to utilize the online Public Case Access System to access the court docket. However, because there is a download fee to obtain the case information, the court is also requiring a website for easy access to the information by the proposed class members. Counsel shall also add instructions for anyone wishing to appear remotely at the final fairness hearing. Remote appearances must be made Zoom, which includes telephonic or video options. For telephonic appearances, the Zoom call-in number is (888) 475-4499 and the Zoom ID is 841 204 6267. For video appearances, the Zoom link is http://saccourt.zoom.us/my/dept53.54a These revisions shall be made prior to service of the Class Notice upon settlement class members.

In addition to identifying the Objection by case number and case title, the notice shall provide that the class member's Objection must also identify the correct department, Department 53, as well as the date and time of the Final Approval hearing, January 25, 2022 at 1:30 p.m.

The final fairness hearing shall take place on January 25, 2022 at 1:30 p.m. in this department. Plaintiff shall file the motion for final approval pursuant to the Code of Civil Procedure.

IT IS SO ORDERED.

OCT - 1 2021

Honorable Shama H. Mesiwala
Judge of the Superior Court