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

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
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11 KIJANA WICKER, individually, and on
12 behalf of aggrieved employees pursuant to the
13 Private Attorneys General Act ("PAGA");

14 Plaintiff,

15 v.

16 ASC PROFILES LLC dba ASC BUILDING
17 PRODUCTS, ASC STEEL DECK, AND AEP
18 SPAN, a Delaware limited liability company;
19 BLUESCOPE STEEL AMERICAS, LLC, a
20 Delaware limited liability company;
21 BLUESCOPE BUILDINGS NORTH
22 AMERICA, INC., a Delaware corporation;
23 BLUESCOPE STEEL LIMITED, an unknown
24 business entity; NS BLUESCOPE COATED
25 PRODUCTS – NORTH AMERICA, a
26 Delaware limited liability company;
27 STEELSCAPE, LLC, a California limited
28 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

28 ~~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

~~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



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

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

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

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

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

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

5 In this wage and hour action, Plaintiff allege, among other things, that Defendants ASC Profiles,
6 LLC, et al, committed wage and hour violations by failing to pay overtime, failing to pay meal and rest
7 break premiums, failing to pay minimum wages, failing to timely pay final wages, failing to provide
8 compliant wage statements, failing to keep payroll records, failing to reimburse business expenses, and
9 failing to pay sick leave. Plaintiff also allege that Defendants violated Business and Professions Code §
10 17200. Plaintiff also seeks penalties pursuant to PAGA.

11 According to the proposed settlement reached after mediation, Defendants have agreed to pay a
12 gross settlement amount of \$5,000,000 to all current and former nonexempt employees of Defendants
13 in California from October 30, 2015 through June 30, 2021. Payments will be allocated to class members
14 on a pro rata basis based on the number of weeks a class member worked. There are approximately 550
15 class members. The settlement also includes a \$10,000 service award to the named Plaintiff. The
16 settlement allows Plaintiff's counsel to seek fees up to \$1,900,000 (38% of the gross settlement) and up
17 \$30,000 in costs, all of which will be deducted from the gross settlement amount. The settlement also
18 provides that class administration fees of up to \$15,000 will be deducted from the gross settlement
19 amount. \$200,000 is allocated to the PAGA portion of the settlement with 75% (\$150,000) being paid
20 to the LWDA and 25% (\$50,000) to aggrieved employees as defined in the settlement.

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

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

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