

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MADELYNN BLACK, *et al.*

Plaintiff,

v.

EWC EAST BAY, INC., *et al.*

Defendants.

Case No. 37-2022-00009708-CU-OE-CTL

Hon. Kenneth J. Medel
Dept. 66

CLASS ACTION

**[Proposed] Order Granting Preliminary
Approval of Class Action Settlement**

Motion for Prelim. App. Hearing

Date: December 8, 2023

Time: 9:30 a.m.

[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval of Class Action
Settlement, Memorandum of Points and Authorities,
and Declaration of Nicholas J. Ferraro]

Action Filed: March 14, 2022

1 This matter came on for hearing on December 8, 2023 at 9:30 a.m. in Department 66 of the
2 above-captioned Court on Plaintiff's Motion Preliminary Approval of Class Action Settlement
3 ("Motion").

4 Having fully reviewed the Motion, the supporting Memorandum of Points and Authorities,
5 Declaration of Nicholas J. Ferraro (and its exhibits), including the settlement agreement ("Settlement"),
6 and the notice attached as an exhibit to the Settlement, and in recognition of the Court's duties (to make
7 a preliminary determination as to the reasonableness of any proposed class action settlement; to ensure
8 proper notice is provided to all class members in accordance with due process requirements; and to set
9 a final approval hearing to consider the good faith, fairness, adequacy and reasonableness of the
10 proposed Settlement), the Court makes the following determinations and orders:

11 1. The Court conditionally finds, for the purposes of approving this settlement only, the
12 proposed class meets the requirements for certification under § 382 of the California Code of Civil
13 Procedure: (a) the proposed class is ascertainable and so numerous joinder of all class members is
14 impracticable; (b) there are questions of law or fact common to the proposed class, and a well-defined
15 community of interest among members of the proposed class with respect to the subject matter of the
16 class action; (c) the claims of the class representative are typical of the claims of the members of the
17 proposed class; (d) the class representative appears to be adequate to serve in that role; (e) a class action
18 is superior to other available methods for an efficient adjudication of this controversy in the context of
19 settlement; and (f) counsel of record for the Plaintiff are qualified to serve as class counsel.

20 2. The Court finds, on a preliminary basis, the Settlement, incorporated by this reference
21 in full, and made a part of this Order, appears to be within the range of reasonableness of a settlement
22 which could ultimately be given final approval by this Court.

23 3. The Court further finds, on a preliminary basis, (a) the non-reversionary Gross
24 Settlement Amount is fair and reasonable to the class when balanced against the probable outcome of
25 further litigation relating to class certification, liability and damages issues, and potential appeals;
26 (b) sufficient investigation, research, and informal discovery, have been conducted such that counsel
27 for the parties are able to reasonably evaluate their respective positions; (c) settlement at this time will
28

1 avoid substantial costs, delay, and risks presented by further prosecution of the litigation; and (d) the
2 proposed Settlement was reached through prudent and non-collusive negotiations.

3 4. The Court finds the allocation from the common fund to PAGA penalties, including the
4 LWDA's 75% share, as fair, adequate, and reasonable in light of the overall gross settlement and that
5 the proposed settlement of PAGA penalties has been adequately submitted to the LWDA in advance of
6 the preliminary approval hearing. Therefore, the Court **APPROVES** the PAGA payment pursuant to
7 Labor Code § 2699(1)(2).

8 5. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
9 Approval of Class Action Settlement is **GRANTED**.

10 6. Class members are therefore defined pursuant to the terms set forth in the Settlement.

11 7. The Court further finds the proposed notice fairly and adequately advises class members
12 of (a) pendency of the Settlement; (b) conditional class certification for settlement purposes only;
13 (c) preliminary Court approval of the proposed Settlement; (d) the date, time and place of the Final
14 Approval Hearing; (e) the terms of the proposed Settlement and the benefits available to the class under
15 the Settlement; (f) their right to receive a proportionate share of the Net Settlement Amount without
16 the need to return a claim form; (g) their right to request exclusion, and the procedures and deadline for
17 doing so; (h) their right to object to the Settlement, and the procedure and deadline for doing so; and
18 (i) their right to appear at the final approval hearing.

19 8. The Court further finds the proposed notice provides the best practicable notice to the
20 Class and comports with the constitutional requirements, including those of due process. The Court
21 further finds that mailing of the notice to the last known address of all class members with measures
22 taken for verification of an address and skip tracing of bad addresses, as specifically described within
23 the Settlement, constitutes an effective method of notifying class members of their rights with respect
24 to the class action and the Settlement.

25 9. Therefore, for good cause, the Court **APPROVES** the notice for distribution to the class
26 pursuant to the notice procedures set forth in full in the Settlement.

27 Accordingly, it is **ORDERED** that:

28 a. CPT be appointed the Administrator of the Settlement, as more specifically set

1 forth in the Settlement;

2 b. Ferraro Vega Employment Lawyers be appointed as class counsel;

3 c. Plaintiff Madelynn Black be appointed as class representative;

4 d. All deadlines, terms, and conditions set forth in the Settlement incorporated by
5 reference into this Order shall apply and govern the notice procedure and response deadlines;

6 e. Any class member who desires to object may appear in Court at the Final
7 Approval Hearing to present oral objections;

8 f. If for any reason the Court does not execute and file an Order Granting Final
9 Approval of Class Action Settlement, or if the Effective Date, as defined in the Settlement, does not
10 occur for any reason whatsoever, the Settlement and the proposed Settlement that is the subject of this
11 Order, and all evidence and proceedings had in connection therewith, shall be restored without
12 prejudice to the *status quo ante*, pursuant to the terms set forth in the Settlement.

13 10. **IT IS FURTHER ORDERED** that the Final Approval Hearing shall be held before the
14 undersigned at _____ [hearing time] on _____ [hearing date], in this
15 Department.

16 11. At the Final Approval Hearing, the Court will consider the fairness, adequacy, and
17 reasonableness of the proposed Settlement preliminarily approved in his Order and notice process to
18 be effectuated, and to consider the application for a class representative service payment to the class
19 representative, the administration expenses, attorneys' fees, and costs.

20 12. The Court reserves the right to continue the Final Approval Hearing without further
21 notice to the class. However, if written objections are submitted, class counsel is ordered to serve
22 notice on any such objecting class member of the new date and time of the Final Approval Hearing.

23
24 **IT IS SO ORDERED.**

25
26 Date: _____

The Honorable Kenneth J. Medel
Judge of the Superior Court