

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 19 2022

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN BERNARDINO

16 JOSE DAMIAN CASTILLO, individually, and on
17 behalf of all others similarly situated,

18 *Plaintiff,*

19 vs.

20 GIBSON OVERSEAS, INC., a California Corporation;
and DOES 1 through 10, inclusive,

21 *Defendants.*

22 EZEQUIEL HERRERA, individually, and on behalf of
23 other members of the general public similarly situated,

24 *Plaintiff,*

25 vs.

26 GIBSON OVERSEAS, INC., a California
corporation; and DOES 1 through 10, inclusive,

27 *Defendants.*

Case No.: CIVDS2022537 [Castillo]
Case No.: CIVSB2024673 [Herrera]

[Assigned to the Hon. Judge David Cohn,
Dept. S26. for all purposes]

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 19, 2022
Time: 10:00 a.m.
Courtroom: S26
Judge: David S. Cohn

Castillo Action Filed: October 13, 2020
Herrera Action Filed: November 2, 2020
Trial Date: Not Set

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

2 Plaintiffs Jose Damian Castillo and Ezequiel Herrera (“Plaintiffs”) and Black Diamond Blade
3 Gibson Overseas, Inc. (“Defendant”) have reached terms of settlement for a putative class action.

4 Plaintiffs have filed a motion for preliminary approval of a class action settlement of the claims
5 asserted against Defendant in this action, memorialized in the JOINT STIPULATION OF CLASS
6 ACTION AND PAGA ACTION SETTLEMENT (*see* Declaration of H. Scott Leviant In Support of
7 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement [“Leviant Decl.”], at Exh. 1).
8 The JOINT STIPULATION OF CLASS ACTION AND PAGA ACTION SETTLEMENT is referred to
9 herein as the “Agreement” or “Settlement.”

10 After reviewing the Agreement, the Notice process, and other related documents, and having
11 heard the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

12 1. The Court preliminarily finds that the terms of the proposed class action Settlement are
13 fair, reasonable, and adequate, pursuant to California Code of Civil Procedure § 382. In granting
14 preliminary approval of the class action settlement the Court has considered the factors identified in
15 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v. Apple Computer,*
16 *Inc.*, 91 Cal. App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706 (2006).

17 2. The Court finds that the Settlement has been reached as a result of intensive, serious and
18 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
19 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate
20 their respective positions. The Court also finds that settlement at this time will avoid additional
21 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
22 of the action. The Court finds that the risks of further prosecution are substantial.

23 3. The parties’ Settlement is granted preliminary approval as it meets the criteria for
24 preliminary settlement approval. The Settlement falls within the range of reasonableness and appears
25 to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing.
26 The Settlement Class meets the requirements for conditional certification for settlement purposes only
27 under Code of Civil Procedure § 382. The Court finds that it is appropriate to notify the members of
28 the proposed settlement Class of the terms of the proposed settlement.

1 4. The parties' proposed notice plan is constitutionally sound because individual notices
2 will be mailed to all Class Members whose identities are known to the parties, and such notice is the
3 best notice practicable. The parties' proposed Class Notice, attached to the Settlement as Exhibit A
4 thereto, is sufficient to inform Class Members of the terms of the Settlement, their rights under the
5 settlement, their rights to object to the Settlement, their right to receive a payment under the settlement
6 or elect not to participate in the settlement, and the processes for doing so, and the date and location of
7 the final approval hearing and are therefore approved.

8 5. The following persons are certified as Class Members solely for the purpose of entering
9 a settlement in this matter:

10 All persons who worked for any Defendant in California as an hourly paid, non-
11 exempt employee during the Class Period (the "Class Period" is October 13, 2016
through the date of Preliminary Approval). (Settlement, ¶¶ 3-4.)

12 6. Plaintiffs Jose Damian Castillo and Ezequiel Herrera are appointed the Class
13 Representatives. The Court finds that Moon & Yang, APC and Capstone Law APC, Plaintiffs'
14 counsel, are adequate, as they are experienced in wage and hour class action litigation and have no
15 conflicts of interest with absent Class Members, and that they adequately represented the interests of
16 absent class members in the Litigation. Moon & Yang, APC and Capstone Law APC are appointed
17 Class Counsel.

18 7. The Court appoints CPT Group, Inc. to act as the Settlement Administrator, pursuant to
19 the terms set forth in the Agreement.

20 8. Defendant is directed to provide the Settlement Administrator the names and most
21 recent known mailing addresses of Class Members and any other information required in accordance
22 with the Agreement (the "Class Database"), no later than 14 calendar days after entry of this Order,
23 which deadline is estimated to be **February 2, 2022**. (Settlement, ¶ 33(a).)

24 9. The Settlement Administrator is directed to mail the approved Class Notice by first-
25 class mail to the Class Members in accordance with the Agreement, no later than 14 calendar days after
26 receipt of the Class Database, which deadline is estimated to be **February 16, 2022**. (Settlement, ¶
27 33(b).)

28

1 10. Class Members will be bound by the Agreement unless they submit a timely and valid
2 written request to be excluded from the Settlement, postmarked no later than 60 days following mailing
3 of the Notice, or as possibly extended by operation of Paragraph 14 of the Settlement for certain re-
4 mailed Notices.

5 11. Any request for exclusion shall be submitted to the Settlement Administrator rather than
6 filed with the Court. Class members are not required to send copies of their Exclusion request to
7 counsel. The Settlement Administrator shall file, or provide to Counsel for filing, a declaration
8 authenticating a copy of every Exclusion request received by the Administrator.

9 12. A final approval hearing will be held on 6/6, 2022, at
10 10:00, in Department S-26, to determine whether the settlement should be granted final approval
11 as fair, reasonable, and adequate as to the Class Members. At that time, the Court will hear all evidence
12 and arguments necessary to evaluate the Settlement. Class Members and their counsel may support or
13 oppose the Settlement, if they so desire, in accordance with the procedures set forth in the Class Notice
14 and this Order. The final approval hearing may be conducted telephonically, based upon conditions
15 related to the COVID-19 pandemic at that time.

16 13. Plaintiffs shall file a Motion for Final Approval, including any request for an award of
17 fees, costs, and Enhancement Awards to Plaintiffs, no later than 16 court days / calendar
18 ~~days~~ prior to the final approval hearing. In conjunction with the filing of the final approval motion, a
19 declaration from the Settlement Administrator on the outcome of the notice process shall be filed with
20 the Court. At that time, the Parties shall also file responses to any written objections received by the
21 Settlement Administrator by the Response Deadline.

22 14. As set forth in the Notice, any Class Member may appear at the final approval hearing
23 in person (which "in person" appearance may be telephonic, as noted above) or by his or her own
24 attorney and show cause why the Court should not approve the settlement, or object to the motion for
25 awards of the Class Representative Enhancement Payments and Attorney's Fees and Costs. For any
26 written comments or objections to be considered at the hearing, the Class Member must submit a
27 written objection in accordance with the deadlines set forth in the Class Notice, or as otherwise
28 permitted by the Court.

1 15. Any written objection shall be submitted to the Settlement Administrator rather than
2 filed with the Court. Class members are not required to send copies of their written objection to
3 counsel. The Settlement Administrator shall file, or provide to Counsel for filing, a declaration
4 authenticating a copy of every written Objection received by the Administrator.

5 16. The Court reserves the right to continue the date of the final approval hearing without
6 further notice to Class Members.

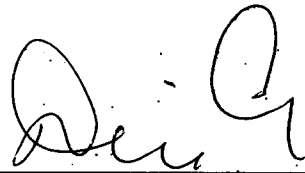
7 17. Class Counsel shall give notice to any objecting party of any continuance of the hearing
8 of the motion for final approval.

9 18. The Court retains jurisdiction to consider all further applications arising out of or in
10 connection with the settlement.

11
12 **IT IS SO ORDERED.**

13
14 Dated: _____

1/19/27



Hon. David Cohn
SAN BERNARDINO COUNTY SUPERIOR COURT
JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action by sending the original [or] a true copy thereof to interested parties as follows [or] as stated on the attached service list:

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BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **December 22, 2021** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature