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Attorneys for Plaintiff Edgar Rodriguez-Fonseca

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

EDGAR RODRIGUEZ-FONSECA, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

HERBERT MALARKEY ROOFING COMPANY, a California Corporation, and DOES 1 through 100,

Defendants.

FILED
Superior Court of California
County of Los Angeles
10/22/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: B. Guerrero Deputy

Case No.: 19STCV01237

Assigned For All Purposes To:

Judge: Kenneth R. Freeman
Dept.: Spring Street 14

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

Action Filed: January 17, 2019
Trial Date: None Set

1 This matter came on for hearing on October 12, 2021 at 11:00 a.m. in Department 14 of the
2 above-captioned court on the Motion for an Order Granting Preliminary Approval of Class Action
3 Settlement.

4 The Court, having fully reviewed the Motion for Preliminary Approval of Class Action
5 Settlement; the Points and Authorities and Declarations filed in support thereof; and the Joint
6 Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”) and all exhibits
7 attached thereto, including the Notice of Proposed Settlement of Class Action (“Class Notice”); and
8 in recognition of the Court’s duty to make a preliminary determination as to the reasonableness of
9 any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure
10 proper notice is provided to class members in accordance with due process requirements, and to set
11 a Final Fairness Hearing to consider the proposed settlement as to the good faith, fairness, adequacy
12 and reasonableness of any proposed settlement, **HEREBY MAKES THE FOLLOWING**
13 **DETERMINATIONS AND ORDERS:**

14 The Court finds on a preliminary basis that the Settlement Agreement, incorporated in full
15 by this reference and made part of this Order Granting Preliminary Approval of Class Action
16 Settlement, appears to be in the range of reasonableness of a settlement which could ultimately be
17 given final approval by this Court. The Court notes that Defendant Herbert Malarkey Roofing
18 Company (“Defendant”) has agreed to create a Qualified Settlement Fund in the amount of
19 \$300,000 which amount will be fully funded and paid out by Defendant provided certain conditions
20 of the Settlement Agreement are met. Included within the Qualified Settlement Fund is a Net
21 Settlement Fund in the amount of approximately \$162,500. Defendant will pay out the entirety of
22 the Net Settlement Fund to Participating Class Members. It appears to the Court on a preliminary
23 basis that the settlement amount is fair and reasonable to the Class when balanced against the
24 probable outcome of further litigation relating to class certification, liability and damages issues and
25 potential appeals. It further appears that significant investigation, research, and litigation has been
26 conducted such that counsel for the parties at this time are able to reasonably evaluate their
27 respective positions. It further appears that settlement at this time will avoid substantial costs, delay,
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1 and risks that would be presented by the further prosecution of the litigation. It further appears that
2 the proposed settlement has been reached as the result of intensive, serious, and non-collusive
3 negotiations between the parties.

4 **ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR AN ORDER**
5 **GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY**
6 **GRANTED, AND AS A PART OF SAID PRELIMINARY APPROVAL, THE COURT HEREBY**
7 **ORDERS THAT THE CLASS BE CONDITIONALLY CERTIFIED FOR SETTLEMENT**
8 **PURPOSES ONLY, AND THAT VACHE A. THOMASSIAN AND CASPAR JIVALAGIAN OF**
9 **KJT LAW GROUP LLP, AND CHRISTOPHER A. ADAMS OF ADAMS EMPLOYMENT**
10 **COUNSEL BE CONDITIONALLY AND PRELIMINARILY APPOINTED CLASS COUNSEL.**

11 **MORE SPECIFICALLY, THE COURT FINDS AS FOLLOWS:**

12 The Class provisionally certified by this Order for settlement purposes is as follows:

13 “Class” and “Class Members” means all persons who, at any time between January 17, 2015
14 and October 12, 2021 (the date of the Court’s Minute Order Conditionally Granting Preliminary
15 Approval of Class Action Settlement), worked in a non-exempt position for Defendant in the State
16 of California.

17 The Court finds that (a) the Class is so numerous that joinder of all Class Members is
18 impracticable; (b) The claims of Plaintiff Edgar Rodriguez-Fonseca are typical of the Class
19 Members’ claims; (c) there are questions of law and fact common to the Class, which predominate
20 over any questions affecting only individual Class Members; and (d) class certification is superior to
21 other available methods for the fair and efficient adjudication of the controversy and to effectuate
22 the Settlement.

23 The Court finds that the Class Notice (attached as Exhibit B to the Settlement Agreement)
24 comports with all constitutional requirements including those of due process.

25 The Court further finds that the proposed Class Notice adequately advises the Class about:
26 (a) the terms of the proposed Settlement and the benefits available to each Class Member; (b) each
27 Class Member’s right to object to and/or opt out of the Settlement and the timing and procedures
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1 for doing so; (c) the temporary and conditional certification of the Class for settlement purposes
2 only; (d) preliminary Court approval of the proposed Settlement; (e) timing and procedures for
3 distributing the settlement funds to the Participating Class Members; and (f) the date of the Final
4 Fairness Hearing as well as the rights of members of the Class to file documentation in support of or
5 in opposition to and appear in connection with said hearing.

6 **ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES**
7 **THE PROPOSED NOTICE TO THE CLASS AND FINDS** that mailing to the last known address
8 to members of the Class, as specifically described within the Settlement Agreement, constitutes an
9 effective method of notifying Class Members of their rights with respect to the Class Action and
10 proposed Settlement.

11 **ACCORDINGLY, IT IS HEREBY ORDERED** that:

12 The Class is provisionally certified as a class as defined above.

13 **IT IS FURTHER ORDERED** that Defendant shall within 14 calendar days after entry and
14 service of this Preliminary Order, provide the Settlement Administrator with Class DATA with (i)
15 each Class Member's full name; (ii) each Class Member's last known address; (iii) each Class
16 Member's last known telephone number; (iv) each Class Member's Social Security number; and (v)
17 each Class Member's start and end dates of employment in a non-exempt position in California.

18 **IT IS FURTHER ORDERED** that the Settlement Administrator shall, within 14 calendar
19 days after receiving the Class Data, and pursuant to the terms of the Settlement Agreement, exercise
20 its best judgment to determine the current mailing address for each Class Member and then mail the
21 Class Notice to the Class by First Class, regular U.S. mail, postage pre-paid, using the most current
22 mailing address available. In the event that a Class Notice is returned to the Settlement
23 Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice
24 to the forwarding address affixed thereto. If no forwarding address is provided, then the Settlement
25 Administrator will promptly conduct a "standard search," sometimes called, "Skip Traces" or
26 "Credit Header" searches, to locate a better address. If a better address is found, the Settlement
27 Administrator will promptly re-send the Class Notice. If, at any time prior to the opt out deadline,
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1 a Class Member contacts the Settlement Administrator, or if Class Counsel does so on his or her
2 behalf, to advise of a change in address, the Class Notice will be re-mailed to the address the Class
3 Member (or Class Counsel) provides. In the event the procedures set forth herein are followed and
4 the intended recipient of a Class Notice still does not receive the Class Notice, the intended
5 recipient will be a Class Member and will be bound by all terms of the Settlement and the Order of
6 Final Approval entered by the Court.

7 **IT IS FURTHER ORDERED** that any Request for Exclusion must be postmarked or
8 delivered no later than 45 calendar days after the Class Notice is first mailed to the Class (or re-
9 mailed to the Class Member), and must be received by the Settlement Administrator to be valid.

10 **IT IS FURTHER ORDERED** that any dispute submitted by a Class Member regarding the
11 weeks of employment credited to that Class Member under the proposed Settlement must be
12 postmarked no later than 45 calendar days after the date when the Class Notice is first mailed to the
13 Class (or re-mailed to the Class Member), to be considered.

14 **IT IS FURTHER ORDERED** that Class Notice will provide that Class Members who wish to
15 object to the Settlement must send to the Settlement Administrator a written statement objecting to
16 the Settlement, no later than 45 calendar days after the date the Class Notice is first mailed by the
17 Settlement Administrator. Such objection must: contain a statement of the Class Member's
18 objections, a statement advising if the objecting Class Member plans to address the Court at the
19 Settlement Fairness Hearing, and any legal briefs, papers or memoranda the objecting Class
20 Member proposes to submit to the Court. The Settlement Administrator shall file all such
21 objections with the Court prior to the Final Fairness Hearing.

22 **IT IS FURTHER ORDERED** that the Final Fairness Hearing shall be held before the
23 undersigned on April 26, 2022 at 10:00 a.m. , in Department 14 of the Superior Court for the State
24 of California County of Los Angeles, located at 312 N Spring Street, Los Angeles, CA 90012 or via
25 LACourtConnect, to consider the fairness, adequacy and reasonableness of the proposed
26 Settlement preliminarily approved by this Order of Preliminary Approval, and to consider the
27 application of Class Counsel for an award of reasonable attorneys' fees and costs, and the Class
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1 Representative Service Award.

2 **IT IS FURTHER ORDERED** that pending final determination of whether this proposed
3 Settlement should be granted final approval, no member of the Class, either directly or
4 representatively, or in any other capacity, shall commence or prosecute any action or proceeding
5 asserting any of the Released Claims against the Released Parties, as defined in the Settlement
6 Agreement.

7 **IT IS FURTHER ORDERED** that any Party to this case, including any Class Member, in
8 person or by counsel, may be heard, to the extent allowed by the Court, in support of, or in
9 opposition to, the Court's determination of the good faith, fairness, reasonableness and adequacy of
10 the proposed Settlement, the requested attorneys' fees and costs, the requested Class Representative
11 Service Award, the payment to the California Labor & Workforce Development Agency ("LWDA
12 Payment"), and any Order of Final Approval and Judgment regarding such Settlement, LWDA
13 Payment, fees, costs and enhancement.

14 **IT IS FURTHER ORDERED** that all briefs regarding the Settlement shall be served and
15 filed in accordance with the following briefing schedule: All briefs and materials in support of an
16 Order of Final Approval and application for attorneys' fees and costs shall be filed with this Court by
17 March 25, 2022. Response briefs, if any, in opposition to objections shall be filed with this Court no
18 later than nine court days before the Final Fairness Hearing, which in this case is April 13, 2022.
19 The Settlement Administrator's report shall be filed be with this by March 25, 2022. Any objections
20 to the Settlement and briefs regarding such objections shall be filed with this Court and served in
21 accordance with the Settlement Agreement no later than 45 days, after the first mailing of the Class
22 Notices.

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In summary, the relevant dates with regard to this Preliminary Order are as follows

Event	Date
Defendant provide Class Data to Administrator	14 calendar days after entry of Preliminary Approval Order
Administrator Mail Class Notice	14 calendar days after receiving Class Data
Deadline to opt-out, object, or dispute information on Class Notice	45 calendar days after mailing of Class Notice
Motion for Final Approval of Class Action Settlement, including Administrator's Report	March 25, 2022
Deadline for Response Briefs	April 13, 2022
Final Fairness Hearing	April 26, 2022 at 10:00 a.m.

IT IS FURTHER ORDERED that, in the event of final approval and the occurrence of the Effective Settlement Date, all Participating Class Members, and their successors, shall conclusively be deemed to have given full releases of the Released Claims against the Released Parties, and all Class Members (other than opt outs) and their successors, shall be permanently enjoined and forever barred from asserting any Released Claims against any Released Party as described by the Settlement Agreement.

IT IS FURTHER ORDERED that, if for any reason the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Settlement Date does not occur for any reason whatsoever, the Settlement Agreement and the proposed Settlement which is the subject of this Order and all evidence and proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are stayed.

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The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to the Class.

IT IS SO ORDERED.

Dated: 10/22/2021



Kenneth R. Freeman

Honorable Kenneth R. Freeman
Kenneth R. Freeman/Judge

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