

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
Alvin B. Lindsay (SBN 220236)
3 alvin@yeremianlaw.com
535 N. Brand Blvd., Suite 705
4 Glendale, California 91203
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308
6 Attorneys for Plaintiff SELINA RANGEL,
on behalf of herself and others similarly situated

FILED
SEP 01 2020
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY: *Christina Zolman*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF STANISLAUS**

11 SELINA RANGEL, an individual, on behalf
of herself and others similarly situated,
12
13 Plaintiff,
14 vs.
15 W.W. GRAINGER, INC., an Illinois
Corporation; and DOES 1 through 10,
16 inclusive,
17 Defendants.

Case No.: CV-18-003041
CLASS ACTION

Assigned for All Purposes To:
Hon. John D. Freeland, Dept. 23

**[PROPOSED] AMENDED ORDER
GRANTING PLAINTIFF'S UNOPPOSED
MOTION FOR FINAL APPROVAL OF
JOINT STIPULATION OF SETTLEMENT
OF CLASS AND PAGA ACTION AND
SETTLEMENT AGREEMENT**

*[Following filing of Notice of Motion and
Motion; Memorandum of Points and Authorities;
Declarations of David Yeremian, Alvin B.
Lindsay, Selina Rangel, and Emilio Cofinco; and
original [Proposed] Order and Judgment]*

Date: September 1, 2020
Time: 8:30 a.m.
Location: Department 23

Complaint Filed: September 24, 2018
First Amended Complaint: February 28, 2019
Trial Date: None Set

1 ORDER

2 On September 1, 2020 at 8:30 a.m. in Department 23 of the above entitled Court, located
3 at 801 10th Street, 4th Floor, Modesto, California 95354, Plaintiff's unopposed motion for final
4 approval of the parties' Joint Stipulation of Settlement of Class and PAGA Action ("Final
5 Approval Motion") came before the Court for hearing. The motion followed successful
6 completion of settlement administration following entry of the Court's Order granting preliminary
7 approval to the Settlement on March 26, 2020. The Court granted preliminary approval following
8 the application of Plaintiff SELINA RANGEL ("Plaintiff"), on behalf of herself and all other
9 similarly situated employees of Defendant W.W. GRAINGER, INC. ("Defendant") (collectively,
10 "the parties"), for preliminary approval of the Settlement set forth in the parties' Joint Stipulation
11 of Settlement of Class and PAGA Action and Settlement Agreement ("Settlement" or "Settlement
12 Agreement"). A copy of the Settlement Agreement is attached to the Declaration of Class Counsel
13 in support of final approval. (Yeremian Decl., Settlement, Exhibit A). Full and adequate notice
14 having been given to the Class as required in the Court's Preliminary Approval Order, and the
15 Court having considered all papers filed and proceedings held herein and with good cause
16 appearing:

17 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 18 1. This Order incorporates by reference the definitions in the Settlement, and all terms
19 used, but not defined herein, shall have the same meanings as in the Settlement.
- 20 2. This Court has jurisdiction over the subject matter of the Action and over all parties
21 to the Action, including all Class Members.
- 22 3. The Motion for final approval is granted. The Court approves the Settlement as fair,
23 reasonable and adequate. The Court makes the following awards and approves the following
24 payments:
- 25 a. \$716,666.67 in attorneys' fees and \$10,000.00 in costs incurred to Class Counsel;
26 b. \$7,500.00 as a Representative Enhancement and Service Award to Plaintiff Selina
27 Rangel as the Class Representative; and
28 c. \$18,500.00 in costs to the settlement administrator, CPT Group, Inc.

1 4. In accordance with the Settlement and the terms set forth in this order, this Order
2 shall not be deemed a judgment in favor of Class members or any them and shall not constitute an
3 obligation for direct compensation of any one or any number of the Class members, but rather it
4 simply approves and undertakes to monitor the execution of the settlement between the parties.
5 Except for the payment due under the Settlement, the parties are each to bear their own costs and
6 attorneys' fees. The Court approves the Settlement Agreement and Defendant and the Released
7 Parties are discharged from all Released Claims in accordance with the terms of the Settlement.

8 5. In this wage and hour class action lawsuit, Plaintiff sues Defendants for a variety of
9 Labor Code violations. The operative complaint alleges that Defendant failed to pay minimum
10 wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage
11 statements, failed to pay final wages when due, committed unfair business practices under
12 California's Unfair Competition Law ("UCL"), and violated the Private Attorneys General Act of
13 2004 ("PAGA"), all in violation of California law. The operative complaint seeks recovery of
14 unpaid minimum wages and overtime, premium pay for improper meal and rest breaks, penalties
15 for improper wage statements, waiting time penalties, restitution under the UCL, penalties under
16 Labor Code § 2699 *et seq.*, prejudgment interest, post-judgment interest, and attorneys' fees and
17 costs.

18 6. The parties settled this matter at mediation and thereafter sought and obtained
19 preliminary approval of the class action settlement on March 26, 2020. Defendant made and
20 makes no admission of liability and none shall be inferred from the Settlement or entry of
21 judgment. Neither this order nor the Settlement shall be used or submitted into evidence in any
22 proceeding or action, except for the sole purpose of enforcing the terms hereof.

23 7. In California, the notice to class members must have "a reasonable chance of
24 reaching a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001)
25 91 Cal.App.4th 224, 251. Importantly, however, the plaintiff need not demonstrate that each
26 member of the class received notice. As long as the notice had a "reasonable chance" of reaching a
27 substantial percentage of class members, it should be found effective.

28

1 8. As reported in the concurrently filed Declaration from the Settlement
2 Administrator, CPT Group received the class data file and listing from Defendant’s counsel on
3 August 1, 2019. (See Declaration of Emilio Cofinco of CPT Group, Inc. in support of Final
4 Approval (“Cofinco Decl.”), at ¶ 6). On May 1, 2020, the Notice Packet was finalized and mailed
5 to the 1,390 individual Class members. (*Id.* at ¶ 8; *see also* Exhibit B thereto for Class Notice as
6 mailed). No Class members objected to the Settlement, and none requested exclusion from it, thus
7 resulting in 1,390 Participating Class Members and a 100% participation rate (*id.* at ¶¶ 8, 12-14,
8 16), and ultimately only 14 Notices were undeliverable following an address search by CPT
9 Group. (*Id.* at ¶ 11). Plaintiff now seeks final approval of the Settlement. Based on the foregoing,
10 the Court finds that the notice provided to Class members conforms to due process requirements.

11 9. It is the duty of the Court, before finally approving the settlement, to conduct an
12 inquiry in the fairness of the proposed settlement. The trial court has broad discretion in
13 determining whether the settlement is fair. In exercising that discretion, it normally considers the
14 following factors: strength of the plaintiff’s case; the risk, expense, complexity and likely duration
15 of further litigation; the risk of maintaining class action status through trial; amount offered in
16 settlement; extent of discovery completed and stage of the proceedings; experience and views of
17 counsel; presence of a governmental participant; and reaction of the class members to the
18 proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In Re*
19 *Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is
20 free to balance and weigh the factors depending on the circumstances of the case. *Wershba v.*
21 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

22 10. The proponent bears the burden of proof to show the settlement is fair, adequate
23 and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
24 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed
25 settlement is fair and reasonable when it is the result of arms’-length negotiations. 2 Herbert
26 Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for*
27 *Complex Litigation* (Third) §30.42.

28

1 11. The Gross Settlement Amount of **\$2.15 million** represents a reasonable recovery
2 for the Class members. With no objectors and no exclusions, the **1,390** Participating Class
3 members will receive an estimated average gross payment of **\$951.32**, with the estimated highest
4 gross payment being **\$2,923.85**. (Cofinco Decl., ¶ 16). The Court finds these numbers to be within
5 the range of reasonableness deserving of final approval.

6 12. Had this case not settled, there would have been additional risks and expenses
7 associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are
8 also likely to prolong the litigation as well as any recovery by the class members.

9 13. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010)
10 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain
11 some flexibility in conducting class actions, which means, under suitable circumstances,
12 entertaining successive motions on certification if the court subsequently discovers that the
13 propriety of a class action is not appropriate.”)

14 14. As part of the Court’s analysis of this factor, the Court should take into
15 consideration the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
16 133. In *Kullar*, objectors to a class settlement argued the trial court erred in finding the terms of
17 the settlement to be fair, reasonable, and adequate without any evidence of the amount to which
18 class members would be entitled if they prevailed in the litigation, and without any basis to
19 evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors
20 that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement
21 terms. Although many factors had to be considered in making that determination, and a trial court
22 was not required to decide the ultimate merits of class members’ claims before approving a
23 proposed settlement, an informed evaluation could not be made without an understanding of the
24 amount in controversy and the realistic range of outcomes of the litigation.

25 15. Defendant has agreed to settle for the non-reversionary amount of **\$2.15 million**,
26 with no additional sums being due from Defendant for damages, costs, attorneys’ fees,
27 contributions, reimbursements or for any other reason. The employer’s share of payroll taxes are
28 estimated at \$37,560 will be paid from the maximum settlement amount, as explained in the Class

1 Notice.

2 16. Class Counsel conducted an investigation that included informal discovery,
3 reviewed time records, interviewed class members, reviewed Plaintiff's documents, and formed
4 damage models based on all of these. The parties also mediated this case with Tripper Ortman,
5 Esq., a respected and highly experienced mediator in wage and hour class actions. In connection
6 with mediation and through discussions with counsel for Defendant, Class Counsel also discussed
7 all aspects of the case, including the risks of litigation and the risks to both parties of proceeding
8 with a motion for class certification as well as the law relating to security screenings and meal and
9 rest periods, as described in the supporting declarations from counsel.

10 17. Class Counsel has experience with wage and hour class litigation. (Yeremian
11 Declaration re: Preliminary Approval, ¶¶ 3-9; Lindsay Decl. re: Final Approval, ¶¶ 7-19). Class
12 Counsel is of the opinion that this settlement is in the best interest of the class provides substantial
13 benefit to class members.

14 18. The class reacted very positively with a 100% participation rate and no Class
15 Members objecting or disputing their payments. (Cofinco Decl., ¶¶ 12-14).

16 19. On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final
17 approval is warranted.

18 20. Class Counsel requested attorneys' fees of \$716,666.67. The Court employs the
19 lodestar method in awarding fees to cross-check the "percentage of the common fund" method.
20 This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize
21 counsel's efforts. In common fund cases, the Court may employ a percentage of the benefit
22 method, as cross-checked against the lodestar. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
23 480, 503.

24 21. Here, Class Counsel seeks fees pursuant to the percentage method. The
25 determination of what constitutes an appropriate percentage "is somewhat elastic and depends
26 largely on the facts of a given case, but certain factors are commonly considered. Specifically, the
27 court may address the percentage likely to have been negotiated between private parties in a
28 similar case, percentages applied in other class actions, the quality of class counsel, and the size of

1 the award.” *In re Ikon Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166,
2 193.

3 22. These factors favor the \$716,666.67 award. As for the first factor, private
4 contingency fee agreements are routinely 30% to 40% of the recovery. (*In re Ikon*, 194 F.R.D. at
5 194.) As for the second factor, “most fees appear to fall in the range of nineteen to forty-five
6 percent.” (*Id.*) As for the third factor, Class Counsel has experience in class actions, including
7 wage and hour cases. Most importantly, Class Counsel achieved good results for the class as
8 evidenced by the class members’ reaction to the settlement. As for the fourth factor, Class Counsel
9 negotiated a \$2.15 million gross settlement. Applying the lodestar cross-check, Class Counsel
10 states that members of his firm have spent at least 422 hours on this case. (Yeremian Declaration,
11 ¶¶ 21-22, 27, Exhibit B; Lindsay Decl., ¶¶ 7-8, Exhibit A). At Counsel’s hourly rates of \$700 per
12 hour, the lodestar is calculated at 422 hours and \$295,400.00 in fees. (Yeremian Declaration, ¶
13 22). The hourly rates appear to be reasonable for attorneys with their respective years of
14 experience (*id.*), and the hours spent are reasonable for this case. It appears that Class Counsel
15 utilized skill in litigating this case, and by all accounts, have good reputations in the legal
16 community; at the very least, there is no evidence before the Court to indicate that the attorneys
17 have negative reputations in the legal community. It also appears that Class Counsel spent
18 appreciable time on the case, which time could have been spent on other meritorious fee-
19 generating cases. Based on the \$295,400.00 lodestar, the fee request of \$716,666.67 translates into
20 a multiplier of 2.42. Because the fee request is based on a reasonable percentage of the settlement
21 fund and is supported by the lodestar calculation with a reasonable multiplier, and because the
22 Class was provided with notice of the fee request and did not object, the Court awards Class
23 Counsel fees in the amount requested of \$716,666.67.

24 23. Class Counsel requests costs in the amount of \$10,000.00, which was the amount
25 allocated under the Settlement and preliminarily approved despite actual incurred costs amounting
26 to \$11,651.31. (Yeremian Declaration, ¶ 35, and Exhibit D thereto). Class Counsel’s actual costs
27 consist of filing fees, mediation fees, court appearances, copying, filing and service fees. These
28 costs appear reasonable and necessary to the conduct of the litigation. Further, as with the fee

1 requests, the maximum cost request was disclosed to class members and deemed unobjectionable.
2 For these reasons, the cost request is granted in the amount of **\$10,000.00**.

3 24. Settlement Administrator CPT Group, Inc. requests administration costs of
4 \$18,500.00. (Cofinco Decl., ¶ 17). Based upon the work performed and yet to be performed, and
5 the fact that the class was provided notice of the initial requested claims administration expenses
6 and none objected, the request for administration costs of **\$18,500.00** is granted.

7 25. The Court approves an allocation to the PAGA claim penalties totaling
8 **\$100,000.00**. This includes a payment of \$75,000.00 to the LWDA, and the remaining \$25,000.00
9 will remain in the Net Settlement Amount for distribution to the participating Class members.

10 26. Finally, Class Counsel seeks a class representative enhancement and service award
11 payment of \$7,500.00 to the class representative. The Court considers the following factors,
12 among others, in determining whether to pay an incentive or enhancement award to a class
13 representative: whether an incentive was necessary to induce the class representative to participate
14 in the case; actions, if any, taken by the class representative to protect the interests of the class; the
15 degree to which the class benefited from those actions; the amount of time and effort the class
16 representative expended in pursuing the litigation; the risk to the class representative in
17 commencing suit, both financial and otherwise; the notoriety and personal difficulties encountered
18 by the class representative; the duration of the litigation; and the personal benefit (or lack thereof)
19 enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil
20 Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing *Clark v American Residential*
21 *Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115
22 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
23 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.
24 Plaintiff devoted approximately 45 hours to this litigation. (Rangel Declaration re: Final Approval,
25 ¶ 10). She assisted his attorneys by having multiple conferences with them and by providing
26 documents and helped Class Counsel prepare for mediation. (*Id.*). Plaintiff freely chose to
27 champion the rights of the class and accepted the risks associated with acting as a class
28 representative. (*Id.* at ¶¶ 10-16). The Court grants a Representative Award of **\$7,500.00** to

1 Plaintiff, as Plaintiff spent significant time on this litigation, Plaintiff's actions benefitted the class,
2 and Plaintiff accepted the risks and notoriety that are associated with acting as a class
3 representative.

4 27. All Parties, including each and all Class members, are bound by this Final
5 Approval Order and by the Settlement. All Class Members shall be deemed to have entered into
6 the Settlement and the releases provided therein. Defendant shall have no obligation to pay any
7 sums in excess of the \$2.15 million settlement payment set forth in the Settlement. Other than as
8 provided in the Settlement, Defendant shall have no obligation after entry of judgment to pay any
9 sum to any person, whether for costs, attorneys' fees, class member reimbursement or
10 contribution, as a result of entry of judgment.

11 28. The Court previously conditionally certified the Action as a class action for
12 Settlement purposes under California Code of Civil Procedure § 382. The Class is defined as
13 follows: "all current and former employees of Defendant in California who were employed at any
14 time during the Class Period as non-exempt, hourly employees at Defendant's SFDC and LADC
15 distribution centers within the State of California." (Yeremian Decl., Exhibit A, Settlement, ¶ 5).
16 The "Class Period" is defined as the time period from September 24, 2014 through March 27,
17 2020. (*Id.* at ¶ 6). There were no requests for exclusion, and the Class encompasses 1,390 Class
18 members.

19 29. The certified Class for settlement purposes continues to meet all the requirements
20 of California Code of Civil Procedure section 382, as already found, and for the reasons set forth
21 in the Court's Preliminary Approval Order and tentative ruling.

22 30. Plaintiff Selina Rangel is the Court-appointed Class Representative for the Class.

23 31. David Yeremian and Alvin B. Lindsay of the law firm David Yeremian &
24 Associates, Inc., are the Court-appointed Class Counsel.

25 32. Upon the Effective Date (as defined in the Settlement), all Released Claims of each
26 and every member of the Classes are and shall be deemed to be conclusively released as against
27 the Releasees. All persons and entities who are in the Classes are hereby forever barred and
28 enjoined from commencing, prosecuting or continuing, either directly or indirectly, against the

1 Releasees, in this or any other jurisdiction or forum, any and all Released Claims (as defined in the
2 Settlement).

3 33. Without affecting the finality of this Order in any way, this Court hereby retains
4 continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of
5 the Net Settlement Amount, including interest earned thereon; (b) disposition of the Net
6 Settlement Amount; (c) hearing and determining applications for attorney fees and expenses in the
7 Action; and (d) all parties hereto for the purpose of construing, enforcing, and administering the
8 Stipulation and the Settlement therein.

9 34. In accordance with the provisions of Code Civ. Proc. §384, the Court sets a
10 compliance hearing for **April 14, 2021** at 8:30 a.m. in Department 23 to confirm full
11 administration of the settlement. Class counsel shall submit a compliance report no later than 5
12 court days before the date of the hearing, which shall include the total amount that was actually
13 paid to the class members pursuant to the subject settlement. At the time of the compliance
14 hearing, the Court shall amend the judgment to direct that the sum of the unpaid funds, plus
15 interest as required by the statute, be distributed as set forth in the Settlement Agreement.

16 35. The Court further orders that Notice of the Court's Order Granting Final Approval
17 and Judgment shall be posted on the Settlement Administrator's website for a period of at least 90
18 days. (Civ. Code §1781(g); Cal. Rules of Ct., rule 3.771(b).)

19 36. There is no just reason for delay in the entry of judgment approving the Class
20 Settlement and immediate entry by the Clerk of the Court is expressly directed.

21 **IT IS SO ORDERED.**

22
23 DATED: 9/1/2020



Honorable John D. Freeland
Judge of the Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

On August 31, 2020, I served the foregoing: **[PROPOSED] AMENDED ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF JOINT STIPULATION OF SETTLEMENT OF CLASS AND PAGA ACTION AND SETTLEMENT AGREEMENT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Michael J. Nader
michael.nader@ogletreedeakins.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
500 Capitol Mall, Suite 2500
Sacramento, CA 95814

Henry F. Galatz (admitted pro hac vice)
galatz.h@grainger.com
Associate General Counsel
W.W. GRAINGER, INC.
100 Grainger Parkway, Mail Stop B4E55
Lake Forest, Illinois 60045

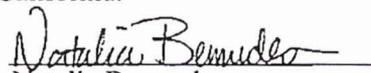
(BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

ONLY BY ELECTRONIC TRANSMISSION) Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based on notice provided on **August 31, 2020** that, during the **Coronavirus (COVID-19) pandemic**, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

(BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 31, 2020, at Glendale, California.


Natalia Bermudes