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11 and all others similarly situated and aggrieved

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11
12 **BETOEL GOMEZ and UBALDO ARIAS**
13 **MENDEZ, as individuals, and on behalf of all**
14 **others similarly situated,**

15 **Plaintiffs,**

16 **v.**

17 **PALLET RECOVERY SERVICE, INC., a**
18 **California corporation, and DOES 1 through**
19 **100, inclusive,**

20 **Defendants;**

CASE NO.: STK-CV-UOE-2021-0008639

[Assigned for all purposes to the Hon. Barbara Kronlund in Dept. 10D]

**ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY.**

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1 This Court, having considered the Motion of plaintiffs Betoel Gomez and Ubaldo Arias
2 Mendez (collectively, "Plaintiffs") for Preliminary Approval of Class and Representative Action
3 Settlement and Provisional Class Certification for Settlement Purposes Only ("Motion for
4 Preliminary Approval"), the Declarations of Vedang J. Patel, David D. Bibiyan, Betoel Gomez,
5 Ubaldo Arias Mendez, and Kelsey Stern, the Class Action and Representative Action Settlement
6 and Release of Claims ("Settlement," "Agreement" or "Settlement Agreement"), the proposed
7 Notice of Proposed Class Action Settlement and Date for Final Approval Hearing ("Class Notice"),
8 and other documents submitted in support of the Motion for Preliminary Approval, hereby
9 **ORDERS, ADJUDGES AND DECREES THAT:**

10 1. The definitions set out in the Settlement Agreement are incorporated by reference
11 into this Order; all terms defined therein shall have the same meaning in this Order.

12 2. The Court certifies the following settlement class ("Settlement Class," "Settlement
13 Class Members," "Class Members") for the purpose of settlement only: all individuals employed by
14 Pallet Recovery Service, Inc. ("Defendant"), in the State of California in non-exempt positions at
15 any time during the period from September 13, 2017 through June 7, 2023 ("Class Period").

16 3. The Court preliminarily appoints the named plaintiffs Betoel Gomez and Ubaldo
17 Arias Mendez (collectively, "Plaintiffs") as Class Representatives, and David D. Bibiyan and
18 Vedang J. Patel of Bibiyan Law Group, P.C., as Class Counsel.

19 4. The Court preliminarily approves the proposed class settlement upon the terms and
20 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
21 settlement appears to be within the range of reasonableness of settlement that could ultimately be
22 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
23 amount is fair, adequate, and reasonable as to all potential class members when balanced against the
24 probable outcome of further litigation relating to liability and damages issues. It further appears that
25 extensive and costly investigation and research has been conducted such that counsel for the parties
26 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
27 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
28 delay and risks that would be presented by the further prosecution of the Action. It further appears

1 that the settlement has been reached as the result of intensive, non-collusive and arms-length
2 negotiations utilizing an experienced third-party neutral.

3 5. The Court approves, as to form and content, the Class Notice that has been submitted
4 herewith.

5 6. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to
6 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The
7 Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies
8 with the requirements of law and appears to be the best notice practicable under the circumstances.

9 7. The Court hereby preliminarily approves the definition and disposition of the Gross
10 Settlement Amount of \$1,000,000.00, which is inclusive of: attorneys' fees of up to thirty-five
11 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Agreement,
12 amounts to \$350,000.00, in addition to actual costs incurred of up to \$30,000.00; service award of
13 up to \$7,500.00 each to plaintiffs Betoel Gomez and Ubaldo Arias Mendez, for a total of \$15,000.00
14 to Plaintiffs; costs of settlement administration of no more than \$12,650.00 and Private Attorneys
15 General Act of 2004 ("PAGA") penalties in the amount of \$50,000.00, of which \$37,500.00 (75%)
16 will be paid to the Labor and Workforce Development Agency ("LWDA") and \$12,500.00 (25%)
17 to "Aggrieved Employees," defined as Class Members working for Defendant as non-exempt,
18 hourly-paid employees during the period from September 8, 2020 through June 7, 2023 ("PAGA
19 Period") in the State of California.

20 8. The Gross Settlement Amount expressly excludes Employer's Share of Payroll
21 Taxes, which will be paid separately and apart by Defendant on the wages portion of the Gross
22 Settlement Amount.

23 9. Class Member's "Workweek" shall the number of weeks that a Settlement Class
24 Member was employed by the Defendant in a non-exempt, hourly position during the Class Period
25 in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

26 10. Defendant represents that there were 20,068 Workweeks during the Class Period. In
27 the event the number of Workweeks increased by more than 10% or 2,009 Workweeks during the
28 Class Period, then either, at Defendant's election: (1) the Gross Settlement Amount would be

1 increased proportionally by the Workweeks in the Class Period in excess of 20,068 Workweeks
2 multiplied by the Workweek Value; or (2) the Class Period would end on the date the number of
3 Workweeks reaches 20,068. The Workweek Value would be calculated by dividing the originally
4 agreed-upon Gross Settlement Amount (\$1,000,000.00) by 20,068 Workweeks. The Parties agree
5 that the Workweek Value amounts to \$49.83 per Workweek ($\$1,000,000.00 / 20,068 \text{ Workweeks}$).
6 Thus, for example, should there be 21,071 Workweeks worked by Class Members in the Class
7 Period, and Defendant elects option (1) above, then the Gross Settlement Amount would be
8 increased by \$96,271.56 ($(21,071 \text{ Workweeks} - 20,068 \text{ Workweeks}) \times \$49.83 \text{ per Workweek}$).
9 Defendant would make its election under this paragraph no later than seven (7) calendar days of
10 being informed by the Settlement Administrator the number of workweeks has exceeded 21,071
11 Workweeks.

12 11. The Court deems ILYM Group, Inc. ("ILYM" or "Settlement Administrator"), the
13 settlement administrator, and preliminarily approves payment of administrative costs, not to exceed
14 \$12,650.00 out of the Gross Settlement Amount for services to be rendered by ILYM on behalf of
15 the class.

16 12. Within seven (7) calendar days after the Preliminary Approval Date, Defendant's
17 Counsel shall provide the Settlement Administrator with information with respect to each Settlement
18 Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendant's
19 possession, custody or control; (3) last known telephone number(s) currently in Defendant's
20 possession, custody or control; (4) last known Social Security Number(s) in Defendant's possession,
21 custody or control; and (5) the dates of employment (i.e., hire dates and, if applicable, re-hire date(s)
22 and/or separation date(s)) for each Settlement Class Member ("Class List").

23 13. The Settlement Administrator shall perform an address search using the United States
24 contained on the Class List with the newly-found addresses, if any.

25 14. Within seven (7) calendar days or soon thereafter of receiving the Class List from
26 Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the
27 Settlement Class Members via first-class regular U.S. Mail using the most current mailing address
28 information available.

1 15. “Response Deadline” means the deadline for Settlement Class Members to mail any
2 Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator, which
3 is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and
4 Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an
5 instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing or forty-five
6 (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a
7 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
8 exclusive means for determining whether a Request for Exclusion, Objection or Workweek Dispute
9 was submitted by the Response Deadline.

10 16. No later than seven (7) calendar days from the Response Deadline, the Settlement
11 Administrator shall provide counsel for the Parties with a declaration attesting to the completion of
12 the notice process, including the number of attempts to obtain valid mailing addresses for and re-
13 sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests
14 for Exclusion and Objections received by the Settlement Administrator.

15 17. Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
16 Settlement by mailing a written request to be excluded from the Settlement (“Request for
17 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To
18 be valid, a Request for Exclusion must include: (1) the Class Member’s name; (2) the last four (4)
19 digits of the Class Member’s Social Security Number; (3) the Class Member’s signature; and (4)
20 the following statement: “Please exclude me from the Settlement Class in the *Betoel Gomez et al.*
21 *v. Pallet Recovery Service, Inc., et al.* matter” or any statement of similar meaning standing for the
22 proposition that the Class Member does not wish to participate in the Settlement.

23 18. Any Settlement Class Member who does not opt out of the Settlement by submitting
24 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
25 those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court
26 if Final Approval of the Settlement is granted.

27 19. Only Participating Class Members may object to the Settlement. In order for any
28 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must do

1 so by mailing a written objection to the Settlement Administrator at the address or phone number
2 provided on the Class Notice no later than the Response Deadline. The Objection should set forth
3 in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four digits of the
4 Objector's Social Security Number; (4) the Objector's signature; (5) a statement of whether the
5 Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection,
6 along with whatever legal authority, if any, the Objector asserts in support of the Objection. If a
7 Settlement Class Member objects to the Settlement, the Settlement Class Member will remain a
8 member of the Settlement Class and if the Court approves this Agreement, the Settlement Class
9 Member will be bound by the terms of the Settlement in the same way and to the same extent as a
10 Settlement Class Member who does not object. The date of mailing of the Class Notice to the
11 objecting Settlement Class Member shall be conclusively determined according to the records of
12 the Settlement Administrator. Settlement Class Members need not object in writing to be heard at
13 the Final Approval Hearing; they may object or comment in person at the hearing at their own
14 expense.

15 20. A Settlement Class Member cannot submit both a Request for Exclusion and an
16 objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the
17 Request for Exclusion will control and the Objection will be overruled.

18 21. Each Settlement Class Member may dispute the number of Workweeks attributed to
19 him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
20 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
21 Response Deadline.

22 22. Defendant shall make a total of twenty-four (24) payments totaling the Gross
23 Settlement Amount, and separately pay the Employer Taxes, to the Settlement Administrator for
24 deposit in an interest-bearing qualified settlement account ("QSF") with an FDIC insured banking
25 institution, for distribution in accordance with the Settlement Agreement and the Court's orders and
26 subject to the conditions described herein the Settlement Agreement. Defendant shall make an initial
27 payment no later than July 1, 2024 of Fifty Thousand Dollars and Zero Cents (\$50,000.00) ("Initial
28 Payment"). Thereafter, and no later than the first of each month Defendant shall make equal monthly

1 payments ("Monthly Payment), until the remaining \$950,000.00 is fully funded. As of execution of
2 this Agreement, the Parties estimate the Monthly Payment will be \$39,583.33, unless increased
3 pursuant to paragraph 17 of this Agreement. As part of the twelfth (12th) monthly payment,
4 Defendant shall also pay Employer Taxes on the first 12 payments, which shall be determined by
5 the Settlement Administrator. Furthermore, as part of the final and twenty-fourth (24th) payment,
6 Defendant shall include the remaining Employer Taxes, which shall be determined by the Settlement
7 Administrator. Furthermore, the Gross Settlement Amount and Employer Taxes are personally
8 guaranteed by Lisa Kilcoyne, John Kilcoyne III and Matthew Ray Haugrud, the owners of
9 Defendant ("Owner"). Defendant and Owner are jointly and severally liable for payment of the
10 Gross Settlement Amount and Employer Taxes.

11 23. In the event that Defendant fails to make any payment as required by the terms of
12 this Settlement Agreement, Class Counsel shall provide notice of failure to make payment to
13 Defendant's Counsel via email at raquel@hendersonhatfield.com and provide Defendant seven (7)
14 calendar days to provide to the Settlement Administrator the missed payment. If Defendant fails to
15 make the payment within seven (7) calendar days of Class Counsel's notice, then Defendant shall
16 pay the entire Gross Settlement Amount within one (1) week of Class Counsel's notice of failure to
17 make payment. Acceptance of a late payment by Class Counsel and/or the Settlement Administrator
18 shall not constitute a waiver, nor should it in any way prejudice any party's rights to receive and
19 demand timely payments thereafter

20 24. Participating Class Members will receive an Individual Settlement Payment and
21 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
22 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty
23 (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration
24 of the 180-day period, checks for such payments shall be canceled and funds associated with such
25 checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil
26 Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as
27 provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, 180
28 Montgomery Street, Suite 600, San Francisco, California 94104, the *cypres* recipient, for use in San

1 Joaquin County.

2 25. All papers filed in support of final approval, including supporting documents for
3 attorneys' fees and costs, shall be filed by SEP 02 2025.

4 26. A Final Approval Hearing shall be held with the Court on SEP 24 2025
5 at 9:00 A.m in Department 10D of the above-entitled Court to determine: (1) whether the
6 proposed settlement is fair, reasonable and adequate, and should be finally approved by the Court;
7 (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service
8 award to the Class Representatives; (4) the amount to be paid to the Settlement Administrator; and
9 (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

10 IT IS SO ORDERED.

11 Dated: APR 25 2025
12

BARBARA A. KROENLUND



Judge of the Superior Court