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JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SELENE PRADO, and CINDY
CALAHAN, as individuals, and on behalf
of all others similarly situated,

Plaintiff,

vs.

WAREHOUSE DEMO SERVICES, INC.,
a Washington Corporation; CLUB
DEMONSTRATION SERVICES, INC., a
Connecticut Corporation; and DOES 1
through 10,

Defendants.

Case No. CV14-3170 JFW (Ex)

**ORDER AND FINAL
JUDGMENT GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Judge John F. Walter
Date: November 2, 2015
Time: 1:30 p.m.
Dept.: 16

1 This matter came on for hearing on November 2, 2015, at 1:30 p.m., in
2 Department 16 of the United States District Court for the Central District of
3 California before the Honorable John F. Walter. Due and adequate notice having
4 been given to the Settlement Class (as defined below), and the Court having
5 considered all papers filed and proceedings held herein, all oral and written
6 comments and any objections received regarding the proposed settlement, having
7 reviewed the record in the above captioned matter, and good cause appearing
8 thereto,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
10 FOLLOWS:

11 1. The Court has jurisdiction over the subject matter of the above-
12 captioned action (the “Action”), the Class Representatives, Defendants Warehouse
13 Demo Services, Inc. and Club Demonstration Services, Inc. (collectively
14 “Defendants”), and all members of the Subclasses, which are defined as follows
15 (the Subclasses are collectively referred to herein as the “Settlement Class”):
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17 **Rest Period Subclass:** The “Rest Period Subclass” means all current and
18 former non-exempt employees of WDS who worked in California as a
19 Demonstrator and/or Lead (also referred to as Sales Advisor and/or Shift
20 Supervisor in or about 2014), and who have worked shifts longer than 6.0
21 hours, but shorter than 7.50 hours, in a workday from April 2, 2011, through
the date of Preliminary Approval.

22 **CDS Rest Period Subclass:** The “CDS Rest Period Subclass” means all
23 current and former non-exempt employees of CDS who worked in
24 California as a Demonstrator and/or Lead (also referred to as Sales Advisor
25 and/or Shift Supervisor in or about 2014) at locations that were previously
26 WDS prior to being acquired by CDS, and who have worked shifts longer
than 6.0 hours, but shorter than 7.50 hours in a workday from April 2, 2011,
through the date of Preliminary Approval.

27 **FLSA Overtime Subclass:** The “FLSA Overtime Subclass” means all
28 current and former non-exempt employees of Defendants in the United

1 States who have held the position(s) of Demonstrator and/or Lead (also
2 referred to as Sales Advisor and/or Shift Supervisor in or about 2014), and
3 who have worked over 40 hours in a workweek, and have earned a “We
4 Drive Sales” Bonus during a corresponding workweek, from April 24, 2011,
5 through the date of Preliminary Approval.

6 **California Incentive Pay Subclass:** The “California Incentive Pay
7 Subclass” means all current and former non-exempt employees of
8 Defendants who worked in California as a Demonstrator and/or Lead (also
9 referred to as Sales Advisor and/or Shift Supervisor in or about 2014), and
10 who have either: (a) worked over 8 hours in a workday, and/or (b) 40 hours
11 in a workweek, and/or (c) received a meal period premium, and who have
12 earned a “We Drive Sales” bonus during a corresponding time period, from
13 April 2, 2011, through the date of Preliminary Approval.

14 **Waiting Time Penalty Subclass:** The “Waiting Time Penalty Subclass”
15 means all members of the Rest Period Subclass, CDS Rest Period Subclass
16 and/or California Incentive Pay Subclass who separated their employment
17 between April 24, 2011, through the date of Preliminary Approval.

18 **Wage Statement Subclass:** The “Wage Statement Subclass” means all
19 members of the Rest Period Subclass, CDS Rest Period Subclass and/or
20 California Incentive Pay Subclass who worked in California from April 24,
21 2013, through the date of Preliminary Approval.

22 **PAGA Aggrieved Employees Subclass:** The “PAGA Aggrieved
23 Employees Subclass” means all current and former non-exempt employees
24 of Defendants who worked in California as a Demonstrator and/or Lead
25 (also referred to as Sales Advisor and/or Shift Supervisor in or about 2014),
26 and who are also a member of the Rest Period Subclass, and/or CDS Rest
27 Period Subclass, and/or California Incentive Pay Subclass, and/or Waiting
28 Time Penalty Subclass, and/or Wage Statement Subclass from April 24,
2013, through the date of Preliminary Approval.

2. The terms “Settlement” or “Settlement Agreement” shall refer to the
Settlement Agreement filed by the Class Representatives on April 6, 2015 (Docket
Entry 131-2), and all terms herein shall have the same meaning as the terms
defined in the Settlement Agreement, unless specifically provided herein.

1 3. The Court grants final approval of the Parties' Settlement Agreement
2 because it meets the criteria for final settlement approval. The settlement falls
3 within the range of possible approval as fair, adequate and reasonable, appears to
4 be the product of arm's-length and informed negotiations, and treats all members
5 of the Settlement Class fairly.

6 4. The Court finds that the distribution by U.S. first-class mail of the
7 Class Notices and Opt-in Form constituted the best notice practicable under the
8 circumstances to all persons within the definition of the Settlement Class and fully
9 met the requirements of due process under the United States Constitution and
10 applicable state law. Based on evidence and other material submitted in
11 conjunction with the Final Approval Hearing, the Notice to the Settlement Class
12 was adequate. The Notices informed members of the Settlement Class of the terms
13 of the Settlement, their right to object to the Settlement or Class Counsel's Motion
14 for Attorney's Fees and Costs and the Class Representatives' Incentive Payments,
15 their right to appear in person or by counsel at the Final Approval Hearing and be
16 heard regarding approval of the Settlement and Class Counsel's motion for
17 Attorney's Fees and Costs and the Class Representatives' Incentive Payments,
18 their right to exclude themselves from the Settlement and pursue their own
19 remedies, and the right of FLSA Overtime Subclass members to opt-in to the
20 Settlement. Adequate periods of time were provided by each of these procedures.
21 No members of the Settlement Class objected to the Settlement or Class Counsel's
22 motion for Attorney's Fees and Costs and the Class Representatives' Incentive
23 Payments, and only 18 Settlement Class members opted out of the Settlement.

24 5. The Court finds, for purposes of settlement only, that the Settlement
25 Class satisfies the applicable standards for certification under Federal Rules 23(a),
26 23(b)(3) and the Fair Labor Standards Act. Accordingly, solely for purposes of
27 effectuating this Settlement, this Court has certified the Settlement Class, as
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1 defined above. Because the Settlement Class is being certified here for settlement
2 purposes only, the Court need not (and does not) address the manageability
3 requirement of Rule 23(b)(3). *See Amchem Products, Inc. v. Windsor*, 521 U.S.
4 591 (1997).

5 6. The Court approves the Settlement, and each of the releases and other
6 terms set forth in the Settlement Agreement, as fair, just, reasonable and adequate
7 as to the Settlement Class, the Class Representatives, and Defendants (collectively
8 the “Settling Parties”). The Settling Parties and the Claims Administrator are
9 directed to perform in accordance with the terms set forth in the Settlement
10 Agreement.

11 7. Except as to any member of the Settlement Class who has validly and
12 timely opted out of the Settlement, and all Settlement Class members who are
13 solely members of the FLSA Overtime Subclass and who did not opt-in, all of the
14 claims asserted in the Action are dismissed with prejudice as to the Class
15 Representatives and the members of the Settlement Class. The Settling Parties are
16 to bear their own attorney’s fees and costs, except as otherwise provided in the
17 Settlement Agreement.

18 8. By this Judgment, the Class Representatives and Settlement Class
19 members who have not validly and timely opted out of the Settlement, and all
20 FLSA Overtime Subclass members who have affirmatively opted-in (collectively
21 the “Releasing Members”), hereby release Defendants and the Released Parties (as
22 defined in the Settlement Agreement) from the Settled Claims (as defined in the
23 Settlement Agreement).

24 9. By this Judgment, the Releasing Members and Class Counsel shall be
25 deemed to have released all claims for attorney’s fees and costs incurred in
26 connection with the litigation and settlement of the Action.
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1 10. The Action is dismissed on the merits and with prejudice,
2 permanently barring the Releasing Members from prosecuting any of the Released
3 Claims. The Court reserves and retains exclusive and continuing jurisdiction over
4 the Action, the Class Representative, the Settlement Class, and Defendants for the
5 purposes of supervising the implementation, effectuation, enforcement,
6 construction, administration and interpretation of the Settlement Agreement and
7 this Judgment.

8 11. The Court finds that the plan of allocation for the shares of the Gross
9 Settlement Sum as set forth in the Settlement Agreement is fair and reasonable and
10 that distribution of the Net Settlement Sum to the Settlement Class shall be done in
11 accordance with the terms outlined in the Notices and Settlement Agreement.

12 12. The Court hereby confirms the appointment of Selene Prado and
13 Cindy Calahan as Class Representatives for the Settlement Class for purposes of
14 settlement.

15 13. The Court hereby confirms the appointment of Hernaldo J. Baltodano
16 of Baltodano & Baltodano LLP, and Paul K. Haines and Fletcher W. Schmidt of
17 Boren, Osher & Luftman LLP as Class Counsel for the Settlement Class for
18 purposes of settlement and the releases and other obligations therein.

19 14. Defendants have agreed for the Claims Administrator to pay from the
20 Gross Settlement Sum: (i) the Claims Administrator its reasonable fees for its
21 services; and (ii) the Incentive Payments to the Class Representatives to reimburse
22 them for their valuable services to the Settlement Class. The Court hereby
23 approves the payment of settlement administration costs in the amount of \$55,000
24 to CPT Group, Inc., the Claims Administrator, for services rendered in this matter.
25 The Court also approves the Incentive Payments to Class Representative Prado in
26 the amount of \$10,000, and to Class Representative Calahan in the amount of
27 \$5,000 to reimburse the Class Representatives for their valuable services in
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1 initiating and maintaining this litigation and the benefits conferred onto the
2 Settlement Class and Defendants' current and future employees as a result of the
3 Action. The Court finds that these payments are fair and reasonable. The Claims
4 Administrator is directed to make the foregoing payments in accordance with the
5 terms of the Settlement Agreement.

6 15. The Court hereby awards to Class Counsel the amount of \$1,275,000
7 for attorney's fees, and the amount of \$71,716.44 for costs. Based on Plaintiffs'
8 Motion for Attorney's Fees and Costs, and Class Representative Incentive
9 Payments, the Court finds that Class Counsel advanced legal theories on a
10 contingent-fee basis, and that their efforts resulted in a substantial monetary
11 recovery for the Settlement Class in addition to meaningful non-monetary relief.
12 The Court finds this payment to be fair and reasonable. The Claims Administrator
13 is ordered to wire these funds to Class Counsel in accordance with the terms of the
14 Settlement Agreement.
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16 16. This document shall constitute a judgment for purposes of Rule 58 of
17 the Federal Rules of Civil Procedure.

18 IT IS SO ORDERED.



19 Dated: November 2, 2015

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The Honorable John F. Walter
United States District Judge
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