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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LEE BOND and RICHARD JAMES
BURKHART, individually and others
similarly situated,

Plaintiffs,

vs.

FERGUSON ENTERPRISES, INC., a
corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO. 1:09-CV-01662-OWW-MJS

CLASS ACTION

**REVISED ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 23, 2011

Time: 10:00 a.m.

Crtrm.: 3

Judge: Hon. Oliver Wanger

1 Plaintiffs and their counsel filed this class action lawsuit alleging that
2 Defendant Ferguson Enterprises, LLC (“Defendant”) failed to provide a putative
3 Class¹ of employees with timely off-duty meal periods; failed to pay premium
4 payments for missed, on-duty and untimely meal periods; failed to pay wages due
5 based on the application of an automatic lunch deduction that resulted in unpaid
6 wages on days when no off-duty meal break was taken; failed to provide accurate
7 itemized wage statements; and failed to pay all wages due upon termination or
8 separation from employment. Plaintiffs further contended that these practices
9 violated California Labor Code §§ 226.7, 512, 1194, and 1197. The lawsuit also
10 seeks compensation under the California Unfair Competition Law and Business and
11 Professions Code § 17200, *et. seq.*

12 On November 3, 2010, after a full-day mediation session, the parties reached
13 a class settlement agreement for the disputed claims. In full settlement of the class
14 claims that were encompassed by this case, Plaintiffs and Defendant have agreed to
15 the entry of a Joint Stipulation of Class Action Settlement Agreement (“Settlement
16 Agreement”), including any exhibits thereto.

17 On January 24, 2011, the Court heard Plaintiffs’ Preliminary Approval
18 Motion. On January 25, 2011, the Court issued its Memorandum Decision Re
19 Motion for Preliminary Approval of Class Action Settlement. (Doc. 35). The Court
20 ordered the parties to narrow the scope of the Release contained in the Settlement
21 Agreement. (*Id.* p. 17). Following that amendment, on February 7, 2011, the Court
22 signed the Preliminary Approval Order (Doc. 38) and certified the Class for
23

24 ¹¹ The Settlement Class is defined as: All current and former employees (“Drivers”)
25 of Defendant who were based at Ferguson’s California locations, and whose primary
26 job responsibility at any time during the period from July 17, 2005 through the date
27 of preliminary approval included delivering materials in California by driving on the
28 road (“Class Members”). There are 553 Settlement Class Members.

1 purposes of settlement, approved Ackermann & Tilajef, P.C., and Wasserman,
2 Comden, Casselman & Esensten L.L.P. as Class Counsel, approved Plaintiffs Lee
3 Bond and Richard James Burkhart as the Class Representatives, preliminarily
4 approved the Settlement, including the Enhancement Awards to the named
5 Plaintiffs, and directed that the Class Notice Packet, consisting of the Notice of
6 Settlement, Request for Exclusion, and Claim Form be mailed to the Class. (Doc.
7 38). The Court also approved payment of the claims administration costs to the
8 Settlement Administrator, Simpluris, Inc. (Doc. 38).

9 In accordance with the Preliminary Approval Order, Class Members have
10 been given notice of the terms of the Settlement Agreement and the opportunity to
11 opt out or object to the Settlement. Roughly two thirds of the Settlement Class or
12 347 Class Members submitted valid claim forms. Only 15 Class Members
13 submitted a timely Request for Exclusion, and only 18 Class Members submitted
14 valid Challenge Forms to correct their number of weeks/shifts worked. Thus,
15 approximately two-thirds of the Class Members will receive at least 63.19% of the
16 Net Settlement Amount that is available for distribution among the Class, which is
17 \$963,391.58 (the “Claimed Settlement Amount”). The average settlement award
18 will be \$2,776.34. No Class Member objected to the terms of the Settlement or to
19 the award of attorneys’ fees by the March 31, 2011 deadline.

20 This Court having fully received and considered the Plaintiffs’ Notice of
21 Motion for Final Approval of the parties’ Class Action Settlement and Motion for
22 Attorneys’ Fees and Costs in connection with Final Approval; the supporting
23 memoranda of points and authorities; the declarations of Craig Ackermann, Esq. and
24 Melissa Harnett, Esq.; the declarations of named plaintiffs Lee Bond and Richard
25 James Burkhart; the declaration of the case manager Michael Bui employed by the
26 settlement administrator; the Settlement Agreement; the Class Notice; the Challenge
27 Form; the Request for Exclusion/Opt-Out Form; having heard the oral argument
28 presented to the Court at the June 13, 2011 Final Approval Hearing, and for the

1 reasons set forth in detail in the Court’s revised Memorandum Decision Re
2 Unopposed Motion For Final Approval of Class Action Settlement and For
3 Attorneys’ Fees and Costs (Doc. 59), (the “Memorandum Decision”), it is hereby
4 **ORDERED, ADJUDGED AND DECREED THAT:**

5 1. All terms used herein shall have the same meaning as defined in the
6 Settlement Agreement.

7 2. This Court has jurisdiction over the subject matter of this litigation and
8 over all Parties to this litigation, including Plaintiffs and all Class Members.

9 3. For the reasons set forth in the Court’s Memorandum Decision, this
10 Court hereby certifies the Settlement Class for purposes of settlement, and appoints
11 Plaintiffs Lee Bond and Richard James Burkhart as Class Representatives, and Craig
12 Ackermann, Esq. and Ackermann & Tilajef, P.C. and Melissa Harnett, Esq. and
13 Wasserman, Comden, Casselman & Esensten, L.L.P. as Class Counsel.

14 4. For purposes of this Order, the term “Settlement Class” means: “All
15 current and former employees of Ferguson Enterprises, Inc. (‘Ferguson’) who were
16 based at Ferguson’s California locations, and whose primary job responsibility at
17 any time during the period from July 17, 2005 to January 24, 2011 included
18 delivering materials in California by driving on the road (hereinafter, a ‘Driver’).”
19 Excluded from the Settlement Class are: (1) All new employees hired by Defendant
20 for the position of Driver after November 3, 2010 (i.e., the mediation date); and (2)
21 All Drivers who, prior to July 17, 2009 when this Lawsuit was initially filed in
22 Superior Court, previously entered into a written severance agreement releasing all
23 claims against Ferguson Enterprises, Inc. The “Settlement Class Period” means the
24 period from beginning July 17, 2005 and continuing through January 24, 2011.

25 5. Distribution of the Notice directed to the Settlement Class as set forth
26 in the Settlement Agreement and the other matters set forth therein have been
27 completed in conformity with the Preliminary Approval Order, including notice to
28 all Class Members who could be identified through reasonable effort, and was the

1 best notice practicable under the circumstances. This Notice provided due and
2 adequate notice of the proceedings and of the matters set forth therein, including the
3 proposed settlement set forth in the Settlement Agreement and Plaintiffs' request for
4 reasonable attorneys' fees and costs, to all persons entitled to such Notice, and the
5 Notice fully satisfied the requirements of due process. No class members objected
6 to the Settlement nor objected to the award of reasonable attorneys' fees and costs to
7 Class Counsel. Only 15 class members opted out of the Settlement, and 18 persons
8 challenged their weeks/shifts worked. These challenges have all been resolved by
9 the parties.

10 6. For the reasons set forth in the Court's Memorandum Decision, this
11 Court hereby approves the Settlement set forth in the Settlement Agreement and
12 finds that the Settlement is, in all respects, fair, adequate and reasonable and directs
13 the parties to effectuate the Settlement according to its terms. The Court finds that
14 the Settlement has been reached as a result of intensive, serious and non-collusive
15 arms length negotiations. The Court further finds that the Parties have conducted
16 extensive investigation and research and counsel for the Parties are able to
17 reasonably evaluate their respective positions. The Court also finds that settlement
18 at this time will avoid additional substantial costs, as well as avoid the delay and risk
19 that would be presented by the further prosecution of the Action. The Court has
20 reviewed the monetary recovery that is being granted as part of the Settlement and
21 recognizes the significant value to the Settlement Class of that monetary recovery.

22 7. As discussed at length in the Court's Memorandum Decision, the Court
23 finds and determines that the settlement is fair, adequate and reasonable, based upon
24 the terms set forth in the Settlement Agreement, and gives final approval to the
25 Settlement Agreement, including the Maximum Settlement Amount of \$2,250,000,
26 the Claimed Settlement Amount of \$963,391.58, the attorneys' fees of \$675,000
27 (30% of the Maximum Settlement Amount), and \$10,000 for reimbursement of
28 litigation costs incurred by Class Counsel;

1 8. The Court finds and determines that the Enhancement Awards of
2 \$11,250 to each of the Plaintiffs Lee Bond and Richard James Burkhart are fair and
3 reasonable, and gives final approval to and orders payment to these individuals.

4 9. The Court finds and determines that payment of \$18,000 from the
5 Settlement Amount, previously paid to Simpluris, Inc. for the claims administration
6 costs, is fair and reasonable and gives final approval to the payment made in
7 accordance with the terms of the Settlement.

8 10. The Court finds that, in compliance with the provisions of 28 U.S.C.
9 §1715(b) and (d), Defendant gave notice of this Settlement to the appropriate State
10 and Federal officials more than 90 days prior to the Effective Date of this Order.

11 11. The Effective Date of this Order shall be July 22, 2011 (the 91st day
12 after the CAFA notice was mailed out to appropriate State and Federal officials),
13 provided that neither the Attorney General nor any other state or federal official who
14 receives the CAFA notice files objections to the Settlement Agreement.

15 12. The Court finds and determines that any checks that remain un-cashed
16 180 days from their mailing become null and void, and the funds associated with
17 any such un-cashed checks shall be paid to Mothers Against Drunk Driving
18 (“M.A.D.D.”).

19 13. Except for the 15 Class Members who opted-out, all Class Members, as
20 of the Effective Date, are hereby forever barred and enjoined from prosecuting the
21 Released Claims against the Released Parties, as those terms are defined in the
22 Settlement Agreement.

23 14. The Court finds that the Settlement was entered into in good faith and
24 constitutes a fair, reasonable and adequate compromise of all of the claims covered
25 by this litigation against Defendant.

26 15. Defendant shall fund the settlement within three days after the
27 Effective Date by providing the Settlement Administrator with funds sufficient to
28 pay all of Defendant’s obligations under the Settlement Agreement, including the

1 Claimed Settlement Amount, the Enhancement Awards, Class Counsel's fees and
2 litigation costs, as well as the employer's portion of the applicable payroll taxes on
3 the portion of the Settlement awards characterized as payment for wages. 180 days
4 after the Effective Date, and provided the Claimed Settlement Amount has been
5 paid out in accordance with the Settlement Agreement and this Order, this Action
6 will be dismissed with prejudice. However, the Court will retain jurisdiction of all
7 matters relating to the interpretation, administration, implementation, and
8 enforcement of this Order and the Settlement Agreement for one year from the
9 Effective Date of Settlement.

10 16. Nothing in this Order shall preclude any action to enforce Defendant's
11 obligations under the Settlement Agreement or under this Order, including the
12 requirement that Defendant make payments to the Class Members, Class Counsel
13 and the Settlement Administrator in accordance with the terms of the Settlement
14 Agreement and this Order.

15 17. After administration of the Settlement has been completed in
16 accordance with the Settlement Agreement and all amounts calculated, and within
17 twenty-one (21) business days of the Settlement Administrator mailing out the
18 settlement checks and after all other payments required by the Settlement
19 Agreement have been made, the Settlement Administrator shall file with this Court
20 and provide to Class Counsel a declaration of payment.

21 18. After the declaration of payment from the Settlement Administrator
22 has been filed and within 180 days following the Effective Date, the parties shall file
23 a proposed Final Judgment and Dismissal with Prejudice for entry by the Court.

24 19.

25 IT IS SO ORDERED.

26 Dated: July 15, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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