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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8 AT SACRAMENTO
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10 ALEXIA HERRERA, individually and on
11 behalf of all others similarly situated,
12 Plaintiff,
13 v.
14 ZUMIEZ, INC., and DOES 1 through 10,
15 inclusive,
16 Defendants.

No. 2:16-CV-01802-SB

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
GRANTING MOTION FOR
ATTORNEY'S FEES, COSTS,
AND INCENTIVE AWARD**

18 Before the Court is the parties' Motion for Final Approval of Class Action
19 Settlement, ECF No. 79, and Plaintiff's Motion for Attorney's Fees, Costs, and
20 Incentive Award, ECF No. 80. The Court heard oral argument on the motions on
21 July 26, 2022 by videoconference. Plaintiff was represented by Cody Kennedy,
22 who appeared by video. Defendant was represented by Nathan Austin, who
23 appeared by video.

24 At the hearing, Plaintiff stated that—after the Court granted preliminary
25 approval of the class action settlement on May 6, 2022—the parties gave due and
26 adequate notice to all class action members. Plaintiff stated that, in response to this
27 notice, only one class member submitted a request for exclusion. Finally, Plaintiff

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1 stated that no other parties object to either the class action settlement or the request
2 for attorney's fees, costs, or incentive award. Thus, based on both the parties'
3 arguments and the Court's own review of the settlement agreement and request for
4 fees, costs, and incentive award, the Court orally granted the motions. The Court
5 now enters the parties' proposed order into the record.

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. All terms used herein shall have the same meaning as defined in the
8 Joint Stipulation of Class Action Settlement and Release ("Stipulation of
9 Settlement"), ECF No. 73-1, Exhibit 1.

10 2. "Settlement Class" and "Class Members" shall mean the following:
11 persons who are employed or have been employed by Defendant in California as
12 hourly employees from August 1, 2012 through June 3, 2016. The Settlement
13 Class, however, shall not include any person who previously settled or released
14 any of the claims covered by this Settlement, or any person who previously was
15 paid or received awards through civil or administrative actions for the claims
16 covered by this Settlement, or any person who submits a timely and valid Request
17 for Exclusion as provided in this Settlement. The "Class Period" shall be August 1,
18 2012 through June 3, 2016. For purposes of the Settlement and this Final Order,
19 "Released Parties" as referenced herein and as released in the Settlement shall
20 collectively mean: (i) Defendant, Zumiez, Inc.; (ii) each of Defendant's respective
21 past, present and future parents, subsidiaries and affiliates including, without
22 limitation, any corporation, limited liability company, partnership, trust, foundation
23 and non-profit entity which controls, is controlled by, or is under common control
24 with Defendant, Zumiez Inc.; (iii) the past, present and future shareholders,
25 directors, officers, agents, employees, attorneys, insurers, members, partners,
26 managers, contractors, agents, consultants, representatives, administrators,
27 fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any

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1 of the foregoing; and (iv) any individual or entity which could be jointly liable
2 with any of the foregoing. The term “Action” shall mean this class and PAGA
3 action.

4 3. This Court has jurisdiction over the subject matter of this Action and
5 over all Parties to this Action, including all Class Members (“Stipulation of
6 Settlement”).

7 4. Distribution of the Notice directed to the Class Members as set forth
8 in the Stipulation of Settlement and the other matters set forth therein has been
9 completed in conformity with the Preliminary Approval Order, including notice to
10 all Class Members who could be identified through reasonable effort, is the best
11 notice practicable under the circumstances. The Notice provided due and adequate
12 notice of the proceedings and of the matters set forth therein, including the
13 proposed Settlement set forth in the Stipulation, to all persons entitled to such
14 Notice, and the Notice fully satisfied the requirements of due process. All Class
15 Members and all Released Claims are covered by and included within the
16 Settlement and this Final Order. The deadline for opting out or objecting was July
17 18, 2022. There was an adequate interval between notice and deadline to permit
18 Class Members to choose what to do and act on their decision. 1 Class Members
19 opted out, and 0 Class Members objected. The single class member who requested
20 exclusion, Kevin Cannizzaro, shall be excluded from the settlement.

21 5. The Court hereby finds the Settlement was entered into in good faith.
22 The Court further finds that the Settlement is fair, adequate, and reasonable and
23 that Plaintiff has satisfied the standards and applicable requirements for final
24 approval of this class action settlement under Federal Rule of Civil Procedure
25 23(e):

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- a. The Parties' settlement was reached through arm's-length bargaining between the parties. There has been no collusion between the parties in reaching the proposed settlement;
- b. The Parties' investigation and discovery have been sufficient to allow the court and counsel to act intelligently;
- c. Counsel for the Plaintiff are experienced in similar employment class action litigation and have previously settled similar class claims on behalf of employees claiming wage and hour violations. All counsel recommended approval of the Settlement;
- d. There were zero objectors and one request for exclusion;
- e. The participation rate was high Class Members will be mailed a check for their Settlement Share, which represents more than 99% of the Class;
- f. The Maximum Settlement Amount to be paid by Defendant pursuant to the Settlement equals \$2,800,000. The consideration to be given to the Class Members under the terms of the Settlement is fair, reasonable and adequate considering the strengths and weaknesses of the claims asserted in this action and is fair, reasonable and adequate compensation for the Settlement of this action and release of the Released Claims, given the uncertainties and risks of the litigation and the delays which would ensue from continued prosecution of the action

6. The Court hereby approves the Settlement set forth in the Stipulation and finds that the Settlement is, in all respects, fair, adequate and reasonable, and directs the Parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has been reached as a result of intensive, serious and non collusive arms length negotiations before a well-respected class action mediator.

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1 The Court further finds that the Parties have conducted extensive investigation and
2 research, and counsel for the Parties are able to reasonably evaluate their respective
3 positions. The Court also finds that Settlement at this time will avoid additional
4 substantial costs, as well as avoid the delay and risks that would be presented by
5 the further prosecution of the Action. The Court has reviewed the benefits that are
6 being granted as part of the Settlement and recognizes the significant value to the
7 Class Members. The Court also finds that the Class is properly certified as a class
8 for settlement purposes only.

9 7. As of the date of entry of this Final Order, all Released Claims (as
10 defined in the Stipulation and set forth below) of each and every Class Member is
11 and shall be deemed to be conclusively released as against the Released Parties. As
12 of the date of this Final Order, the Class Representative and each and every Class
13 Member who has not submitted a valid Request for Exclusion is hereby released
14 and forever barred and enjoined from prosecuting the Released Claims, except as
15 to such rights or claims as may be created by the Settlement, against Defendant and
16 the Released Parties from all claims alleged in the Action and that reasonably
17 could have been alleged in the Action based on the factual allegations contained in
18 the operative complaint in the Action and any amendments thereto, as to the Class
19 Members, including but not limited to : (1) all claims for alleged failure to pay
20 reporting time pay under 8 CCR § 11070(5); Labor Code § 558; (2) failure to pay
21 minimum wage under Labor Code §§ 1182.11, 1182.12, 1194, 1194, 1194.2, 1197,
22 and Industrial Welfare Commission (“IWC” Order No. 5-2001); (3) failure to
23 maintain required business records under Labor Code §§ 1174, 1174.5, and the
24 applicable Wage Order; (4) failure to provide accurate and itemized wage
25 statements under Labor Code §§ 226, 226.3; (5) failure to pay all wages earned
26 upon termination under Labor Code §§ 200-203; (6) failure to reimburse business
27 expenses under Labor Code § 2802; (7) violation of Business & Professions Code

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1 section 17200 et seq. including, but not limited to, all claims for unfair, unlawful
2 and harmful conduct to class members, the general public and Defendant's
3 competitors and claims of unlawfully gaining an unfair advantage over other
4 businesses; and (8) PAGA claims for civil penalties due to any Labor Code
5 violations by Defendant including, but not limited to, Labor Code sections 201,
6 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
7 1197, 1197.1, 1198, 1199, 2800 and 2802, and Industrial Welfare Commission
8 Wage Order No. 7-2001; (9) interest; and (10) attorneys' fees and costs
9 (collectively "Released Claims"). In addition, as of the date of this Final Order, the
10 Class Representative and the Settlement Class, and each member of the Settlement
11 Class who has not submitted a valid Request for Exclusion, is forever barred and
12 enjoined from instituting or accepting damages or obtaining relief against the
13 Released Parties for any period from August 1, 2012 through June 3, 2016, arising
14 from the Released Claims.

15 8. Neither the Settlement nor any of the terms set forth in the Stipulation
16 is an admission by Defendant, or any of the other Released Parties, nor is this Final
17 Order a finding of the validity of any claims in the Action or of any wrongdoing by
18 Defendant, or any of the other Released Parties. Neither this Final Order, the
19 Stipulation, nor any document referred to herein, nor any action taken to carry out
20 the Stipulation is, may be construed as, or may be used as, an admission by or
21 against Defendant, or any of the other Released Parties, of any fault, wrongdoing
22 or liability whatsoever. The entering into or carrying out of the Stipulation of
23 Settlement, and any negotiations or proceedings related thereto, shall not in any
24 event be construed as, or deemed to be evidence of, an admission or concession
25 with regard to the denials or defenses by Defendant, or any of the other Released
26 Parties, and shall not be offered in evidence in any action or proceeding in any
27 court, administrative agency or other tribunal for any purpose whatsoever other

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1 than to enforce the provisions of this Final Order, the Stipulation, the Released
2 Claims, or any related agreement or release. Notwithstanding these restrictions,
3 any of the Released Parties may file in the Action, or submit in any other
4 proceeding, the Final Order, the Stipulation, and any other papers and records on
5 file in the Action as evidence of the Settlement to support a defense of *res judicata*,
6 collateral estoppel, release, or other theory of claim or issue preclusion or similar
7 defense as to the Released Claims.

8 9. The Court hereby enters judgment in the entire Action as of the filing
9 date of this Final Order, pursuant to the terms set forth in the Stipulation. Without
10 affecting the finality of this Final Order in any way, the Court hereby retains
11 continuing jurisdiction over the interpretation, implementation and enforcement of
12 the Settlement and all orders entered in connection therewith.

13 10. The Court finds the settlement payments provided for under the
14 Settlement to be fair and reasonable in light of all of the circumstances. The Court
15 orders the calculations and the payments to be made and administered in
16 accordance with the terms of the Settlement.

17 11. The Court hereby confirms Marlin & Saltzman as Class Counsel in
18 the Action.

19 12. The Court finds the attorneys' fees request of thirty-three percent of
20 the common fund to be appropriate compensation for Class Counsel. The
21 attorneys' fees request is within the range that has been approved by other Courts
22 in similar cases and reasonable in light of the circumstances of this case, the
23 substantial and beneficial results obtained on behalf of the Class, and the
24 contingent nature of the recovery over the course of this Action, which included
25 potential loss at summary judgment, certification, and/or trial proceedings.
26 Pursuant to the terms of the Settlement, and the authorities, evidence and argument
27 submitted by Class Counsel, the Court hereby awards Class Counsel attorneys'

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1 fees in the amount of \$933,333.33, and attorneys' costs in the amount of
2 \$18,023.80 from the Maximum Settlement Amount as final payment for and
3 complete satisfaction of any and all attorneys' fees and costs incurred by and/or
4 owed to Class Counsel and any other person or entity related to the Action. The
5 Court further orders that the award of attorneys' fees and costs set forth in this
6 Paragraph shall be administered pursuant to the terms of the Settlement, and made
7 payable to and deposited into the bank accounts of Class Counsel in the Action.
8 The allocation and distribution of the Court-awarded attorneys' fees and costs is
9 subject to a separate arrangement and agreement between Class Counsel.

10 13. The Court also hereby approves and orders an Enhancement Award to
11 Plaintiff and Class Representative Alexia Herrera in the amount of \$25,500 from
12 the Maximum Settlement Amount.

13 14. The Agreement provides for a PAGA Payment of \$100,000, which is
14 allocated 75% to the LWDA and 25% to the Class Members as part of the Net
15 Settlement Amount, which the Court finds to be reasonable. The Court also hereby
16 approves and orders payment in the amount of \$75,000.00 from the Maximum
17 Settlement Amount for PAGA penalties, payable to the California Labor
18 Workforce Development Agency.

19 15. The Court also hereby approves and orders payment from the
20 Maximum Settlement Amount for actual claims administration expenses incurred
21 by the Claims Administrator in the amount of \$30,000.

22 16. The Court also hereby approves and orders that any residue from
23 uncashed Settlement Award checks after the expiration date will be paid out to the
24 State of California Unclaimed Wages Fund. If for any reason the State of
25 California Unclaimed Wages Fund is unable to accept the unclaimed funds, the
26 parties shall agree upon a Cy Pres recipient subject to Court approval.

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1 17. The Court also hereby finds and orders that the Settlement is and
2 constitutes a fair, adequate, and reasonable compromise of the Released Claims
3 against Defendant and the Released Parties.

4 18. Provided the Settlement becomes effective under the terms of the
5 Stipulation, the Court also hereby orders that the deadline for mailing the Court-
6 approved Settlement Awards, attorneys' fees and costs, and Enhancement Awards
7 is as set forth in the Implementation Schedule within the Preliminary Approval
8 Order.

9 19. The Court also hereby finds that there were no objections to the
10 Settlement raised by any person on the record at the hearing on the Final Order.

11 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
12 provide copies to counsel, and **close** the file.

13 **DATED** this 2nd day of August 2022.

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17 Stanley A. Bastian
18 United States District Judge