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25 UNITED STATES DISTRICT COURT
26 NORTHERN DISTRICT OF CALIFORNIA
27 SAN JOSE DIVISION

1 GRACIELA ZAMORA, OLGA LEYVA
2 VELARDE, TERESA LARA, and MARIA
3 RODRIGUEZ DE TORRES, on behalf of
4 themselves and all other persons similarly
5 situated,
6 Plaintiffs,
7 vs.
8 D'ARRIGO BROTHERS COMPANY OF
9 CALIFORNIA,
10 Defendant.

Case No. C-004-00047 JW

CLASS ACTION

James White
[PROPOSED] FINAL APPROVAL
ORDER

Complaint Filed: January 7, 2004

11 WHEREAS, this action, *Graciela Zamora, et. al. v. D'Arrigo Brothers Company of*
12 *California* (the "Action") is pending before this Court as a class action for Final Approval; and

13 This matter having come before the Court for hearing pursuant to the Preliminary Approval
14 Order of this Court dated September 8, 2008, for final approval of the settlement set forth in the
15 Stipulation, Settlement, and Release of Class Action Claims ("Stipulation" or "Settlement") on file
16 herein, and due and adequate notice having been given to the Class Members as required in said
17 Order, and the Court having considered all papers filed herein and otherwise being fully informed
18 of the premises and good cause appearing therefore, it is hereby

19 ORDERED, ADJUDGED AND DECREED THAT:

- 20 1. All terms used herein shall have the same meaning as defined in the Stipulation.
- 21 2. This Court has jurisdiction over the subject matter of this litigation and over all
22 Parties to this litigation, including all Plaintiffs.
- 23 3. The Notice directed to the Class Members as set forth in the Stipulation has been
24 distributed in conformity with the Preliminary Approval Order. This Notice provided due and
25 adequate notice of the proceedings, including the proposed settlement set forth in the Stipulation,
26 to all persons entitled to such Notice. The Notice fully satisfied the requirements of due process.
- 27 4. This Court hereby approves the settlement set forth in the Stipulation and finds that
28 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

1 result of intensive, serious and non-collusive arms length negotiations. The Court further finds
2 that the Parties have conducted extensive and costly investigation and research and counsel for the
3 Parties are able to reasonably evaluate their respective positions. The Court also finds that
4 granting final approval of this settlement at this time will avoid additional substantial costs, as well
5 as avoid the delay and risks that would be presented by the further prosecution of the Action. The
6 Court has reviewed the monetary and non-monetary recovery that is being granted as part of the
7 Settlement and recognizes the significant value to the Settlement Class of that recovery.

8 5. For purposes of this Judgment, the term "Class" means all females employed by
9 Defendant in a Covered Position between July 5, 2000 through and including September 8, 2008,
10 and specifically excludes the positions excluded by the Stipulation. Certification of this Class is
11 for settlement purposes only.

12 6. The Court hereby grants final approval to the Release language contained in the
13 Stipulation, which provides as follows:

14 a. Release As To All Class Members. As of the Effective Date, all
15 Class Members, including the Representative Plaintiffs, are "Releasers" and thus
16 release and forever discharge Defendant and any parent, subsidiary, affiliate,
17 predecessor or successor, and all agents, employees, officers, directors and
18 attorneys thereof ("Released Parties") from the "Released Claims." For purposes
19 of this Agreement, "Released Claims" are defined as any and all individual and/or
20 class-wide claims, debts, liabilities, demands, obligations, guarantees, costs,
21 expenses, attorney fees, damages, actions, causes of action, and claims for relief,
22 contingent or accrued of any kind, known or unknown, arising under federal, state
23 or local law which arise out of and/or relate to any of the following:

24 (1) Any and all allegations and claims asserted in the Plaintiffs'
25 Complaints, including derivative claims arising under any of the following: a) Title
26 VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (i.e., to the extent
27 any alleged policy or practice of failure to promote females and/or any selection
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1 criteria and procedures are alleged to have resulted in a violation of this section or
2 any other Title VII provision); b) California Business & Professions Code,
3 including § 17200 et seq. (i.e., to the extent any alleged policy or practice of failure
4 to promote females and/or any selection criteria and procedures are alleged to have
5 resulted in a violation of any of these sections); c) the California Fair Employment
6 and Housing Act (“FEHA”), California Government Code § 12940 et seq. (i.e.,
7 to the extent any alleged policy or practice of failure to promote females and/or
8 any selection criteria and procedures are alleged to have resulted in a violation of
9 any of these sections); d) California public policy (i.e., to the extent any alleged
10 policy or practice of failure to promote females and/or any selection criteria and
11 procedures are alleged to have resulted in a violation of any such policy); e) the
12 California Constitution, article I, § 8 (i.e., to the extent any alleged policy or
13 practice of failure to promote females and/or any selection criteria and procedures
14 are alleged to have resulted in a violation of this or any other article of said
15 Constitution); f) claims for restitution and other equitable relief (i.e., to the extent
16 any alleged policy or practice of failure to promote females and/or any selection
17 criteria and procedures are alleged to have resulted in a claim for restitution or
18 equitable relief); g) punitive damages (i.e., to the extent any alleged policy or
19 practice of failure to promote females and/or any selection criteria and procedures
20 are alleged to have resulted in a punitive damage claim); h) penalties of any nature
21 whatsoever related to any alleged policy or practice of failure to promote females
22 and/or any selection criteria and procedures; and, i) any other form of relief or
23 benefit arising under federal and California state law claimed on account of the
24 allegations asserted in the Plaintiffs’ Complaints for any alleged policy or practice
25 of failure to promote females and/or any selection criteria and procedures. This
26 specifically includes but is not limited to claims for any type of wages, penalties,
27 benefits, or other amounts for failing to promote females allegedly not in
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1 accordance with any law and/or any selection criteria and procedures allegedly not
2 in accordance with any law.

3 (2) Any and all additional claims alleged in or arising out of the
4 Plaintiffs' Complaints, which are identified therein as follows: (a) pattern and
5 practice of sex discrimination in violation of Title VII of the Civil Rights Act; (b)
6 disparate impact in violation of Title VII of the Civil Rights Act; (c) pattern and
7 practice of sex discrimination in violation of the California Fair Employment and
8 Housing Act ("FEHA"); (d) disparate impact in violation of FEHA; (e) unfair
9 business practice in violation of the California Business and Professions Code; (f)
10 employment practice in violation of the California Constitution and the public
11 policy of California; (g) claims for injunctive relief; (h) claims for compensatory
12 and punitive damages; claims for affirmative action; claims for declaratory relief;
13 (i) claims for back pay, front pay, promotions, lost seniority and other employment
14 benefits; (j) claims for prejudgment interest; (k) claims for post-judgment interest;
15 and (l) claims for attorney fees and costs.

16 The Releasers may hereafter discover facts in addition to or different from
17 those they now know or believe to be true with respect to the subject matter of the
18 Released Claims, but upon the Effective Date, they shall be deemed to have, and
19 by operation of the Final Judgment shall have, fully, finally, and forever settled
20 and released any and all of the Released Claims. As of the Effective Date, the
21 Representative Plaintiffs and all Class Members agree not to sue or otherwise
22 make a claim against any of the Released Parties that is in any way related to the
23 Released Claims.

24 b. General Release By Representative Plaintiffs Only. In addition to
25 the releases made by the Releasers set forth in Section 2 hereof, the Representative
26 Plaintiffs, as of the Effective Date, make the additional following general release
27 of all claims, known or unknown.
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1 The Representative Plaintiffs release the Released Parties from all claims,
2 demands, rights, liabilities and causes of action of every nature and description
3 whatsoever, known or unknown, asserted or that might have been asserted,
4 whether in tort, contract, or for violation of any state or federal statute, rule or
5 regulation arising out of, relating to, or in connection with any act or omission by
6 or on the part of any of the Released Parties committed or omitted prior to the
7 execution hereof. (The release set forth in this subsection shall be referred to
8 hereinafter as the "General Release").

9 The General Release includes any unknown claims the Representative
10 Plaintiffs do not know or suspect to exist in their favor at the time of the General
11 Release, which, if known by them, might have affected their settlement with, and
12 release of, the Released Parties by the Representative Plaintiffs or might have
13 affected their decision not to object to this Settlement or the General Release.

14 With respect to the General Release, the Representative Plaintiffs stipulate
15 and agree that, upon the Effective Date, the Representative Plaintiffs shall be
16 deemed to have, and by operation of the Final Judgment shall have, expressly
17 waived and relinquished, to the fullest extent permitted by law, the provisions,
18 rights and benefits of Section 1542 of the California Civil Code, or any other
19 similar provision under federal or state law, which provides:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
21 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
22 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
23 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
24 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

25 The Representative Plaintiffs may hereafter discover facts in addition to or
26 different from those they now know or believe to be true with respect to the subject
27 matter of the General Release, but the Representative Plaintiffs, upon the Effective
28 Date, shall be deemed to have, and by operation of the Final Judgment shall have,
fully, finally, and forever settled and released any and all of the claims released

1 pursuant to the General Release, whether known or unknown, suspected or
2 unsuspected, contingent or non-contingent, which now exist, or heretofore have
3 existed upon any theory of law or equity now existing or coming into existence in
4 the future, including, but not limited to, conduct that is negligent, intentional, with
5 or without malice, or a breach of any duty, law or rule, without regard to the
6 subsequent discovery or existence of such different or additional facts.

7 7. As of the Effective Date, each and every Released Claim of each and every Plaintiff
8 is and shall be deemed to be conclusively released as against the Released Parties. As of the
9 Effective Date, all Plaintiffs are hereby forever barred and enjoined from prosecuting the Released
10 Claims against the Released Parties, and each and every claim by Plaintiffs is and shall be deemed
11 to be conclusively released as against the Released Parties.

12 8. The Settlement or any part thereof is not a concession or admission, and shall not be
13 used against D'Arrigo Bros. Co., of California ("D'Arrigo Bros.") or any of the Released Parties as
14 an admission or indication with respect to any claim of any fault, concession or omission by
15 D'Arrigo Bros. or any of the Released Parties. Neither the Settlement, nor any document,
16 statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof,
17 shall in any event be:

- 18 a. Construed as, offered or admitted in evidence as, received as or deemed to
19 be evidence for any purpose adverse to the Released Parties, including, but
20 not limited to, evidence of a presumption, concession, indication or
21 admission by any of the Released Parties of any liability, fault, wrongdoing,
22 omission, concession or damage; or
- 23 b. Disclosed, referred to, or offered or received in evidence against any of the
24 Released Parties in any further proceeding in the Actions, or in any other
25 civil, criminal or administrative action or proceeding.

26 9. The Court hereby dismisses this Action on the merits and with prejudice against the
27 Named Plaintiffs and all Class Members in favor of D'Arrigo Bros. and without costs or attorney
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1 fees to any of the Parties as against any other settling party, except as provided for in the
2 Stipulation. Without affecting the finality of this Judgment in any way, this Court hereby retains
3 continuing jurisdiction solely for purposes of (i) settlement administration matters and (ii) such
4 post-Final Judgment matters as may be appropriate under Court rules or as set forth in the
5 Settlement.

6 10. The Court hereby awards Class Counsel attorney fees and costs ("Fees Award") in
7 the total amount of \$ 800,000. D'Arrigo Bros. shall either directly pay, or cause the
8 Claims Administrator to pay, said award to Class Counsel within the time period set forth in the
9 Stipulation. Class Counsel shall not be entitled to any other award of attorney fees or costs in any
10 way connected with the Action. The Court also hereby approves Incentive Awards to the Named
11 Plaintiffs as follows: to Graciela Zamora the amount of \$ 25,000; to Olga Leyva Velarde the
12 amount of \$ 15,000; to Teresa Lara the amount of \$ 15,000; and to Maria Rodriguez
13 De Torres the amount of \$ 15,000. The Court also hereby approves the payment of claims
14 administration expenses in the amount of \$ 33,000, and further orders that this shall constitute a
15 cap on any and all Claims Administrator's costs recoverable from D'Arrigo Bros.

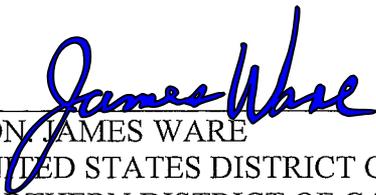
16 11. After administration of the Settlement has been completed in accordance with the
17 Stipulation, and in no event later than 180 days after the Effective Date, D'Arrigo Bros. shall
18 provide written certification of such completion to the Court and Class Counsel. In addition, upon
19 completion of the administration of the Settlement, the Claims Administrator shall provide written
20 certification of such completion to the Court and counsel for all parties, as provided in the
21 Stipulation.

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12. If this Final Judgment and Order of Dismissal with Prejudice does not become final in accordance with the terms of the Stipulation, then this Judgment and all orders entered in connection herewith shall be rendered null and void and shall be vacated, and the Parties shall proceed in all respects as if the Stipulation had not been executed.

The Clerk shall close this file.

Dated: February 20, 2009



HON. JAMES WARE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA