

1 \*E-Filed: May 20, 2014\*

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7 NOT FOR CITATION  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 THOMAS LUSBY, ET AL., individually  
and on behalf of all others similarly situated,

No. C12-03783 HRL

12 Plaintiffs,

**SECOND INTERIM ORDER RE  
PLAINTIFFS' AMENDED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

13 v.

14 GAMESTOP INC., ET AL.,

**[Re: Docket No. 33]**

15 Defendants.

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17 Plaintiffs, representing a putative class, sue Gamestop for various alleged wage and hour  
18 violations. At the preliminary approval hearing, the Court expressed several concerns, most of  
19 which were sufficiently addressed in a supplemental declaration of Plaintiffs' counsel, which also  
20 included an updated settlement agreement. *See* Dkt. No. 36. However, the Court had some  
21 lingering issues with respect to the formula for allocating settlement payments among the  
22 subclasses. In an interim order, the Court asked the parties to further explain why the average  
23 hourly rate was a reasonable proxy of differences in hourly rates, hours worked, and claims among  
24 the subclasses, and to consider incorporating the subclasses' average hours per week into the  
25 calculation. *See* Dkt. No. 40 ("Interim Order"). The Court also requested the following estimates:  
26 (1) payouts based on 30% participation; (2) payouts based on 100% participation; (3) potential  
27 recovery if the class prevailed on every claim raised in the complaint; and (4) Gamestop's share of  
28 payroll taxes. *Id.*

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In response to the Interim Order, counsel for Plaintiffs submitted another supplemental declaration in which she provided the requested estimates and expressed the parties' intent to adopt the Court's suggestion to include average hours worked in the allocation formula. *See* Dkt. No. 41. In view of these anticipated changes, as well as those already made since the filing of the motion, the Court invites a new motion for preliminary approval.

**IT IS SO ORDERED.**

Dated: May 20, 2014



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HOWARD R. LOYD  
UNITED STATES MAGISTRATE JUDGE

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