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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18

19 LINDA DELATORRE, individually and on
behalf of others similarly-situated,

20 Plaintiff,

21 v.

22 JOHNSON CONTROLS, INC., and DOES 1
23 through 20, inclusive,

24 Defendants.
25
26
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Case No.: 13-cv-03214 PSG

**REVISED ~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Magistrate Judge: Hon. Paul S. Grewal

Complaint Filed: April 15, 2013
FAC Filed: May 20, 2013
Case Removed: July 11, 2013

Trial Date: None Set

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1 On April 15, 2013, Plaintiff Linda DelaTorre (“Plaintiff”) filed a complaint against Johnson
2 Controls, Inc. (“Defendant”) on behalf of herself and other former employees, and subsequently filed the
3 operative First Amended Complaint on May 20, 2014. Plaintiff alleges, among other things, that
4 employees are owed compensation for vacation, final wages, and inaccurate itemized wage statements,
5 and related penalties. The lawsuit seeks damages for lost wages, interest, penalties, injunctive relief,
6 attorneys’ fees and expenses. Defendant denies all of Plaintiff’s claims.

7 After initial exchanges of information, the Parties entered into private mediation before respected
8 neutral mediator (and plaintiffs’ counsel) Mark Rudy, Esq. to try and resolve the claims. As a result of
9 that mediation on February 13, 2014, and under the auspices of Mr. Rudy, the Parties reached a
10 settlement. On or about July 15, 2014, Plaintiff and Defendant executed the Stipulation of Settlement
11 and Release (“Stipulation of Settlement”), setting forth the terms of the Settlement.

12 A preliminary hearing was held before this Court on July 29, 2014, for the purpose of
13 determining, among other things, whether the proposed Stipulation of Settlement was within the range
14 of possible approval and whether notice to the Class of its terms and conditions, and the scheduling of a
15 formal fairness hearing, also known as a final approval hearing, will be worthwhile. Appearing at the
16 hearing was counsel for Orrick, Herrington & Sutcliffe LLP on behalf of Defendant; and counsel for
17 Graham Hollis APC on behalf of Plaintiff and the Class Members. Having reviewed the papers and
18 documents presented, having heard the statements of counsel, having considered the matter, and having
19 made findings and rulings at the hearing, the Court HEREBY ORDERS as follows:

20 1. The Court hereby GRANTS Preliminary Approval of the terms and conditions contained
21 in the Stipulation of Settlement. The Court preliminarily finds that the terms of the Stipulation of
22 Settlement appear to be within the range of possible approval, pursuant to Federal Rule of Civil
23 Procedure 23 and applicable law.

24 2. It appears to the Court on a preliminary basis that: (1) the settlement amount is fair and
25 reasonable to the Class Members when balanced against the probable outcome of further litigation
26 relating to class certification, liability and damages issues, and potential appeals; (2) significant informal
27 discovery, investigation, research, and litigation have been conducted such that counsel for the Parties at
28 this time are able to reasonably evaluate their respective positions; (3) settlement at this time will avoid

1 substantial costs, delay and risks that would be presented by the further prosecution of the litigation; and
2 (4) the proposed Settlement has been reached as the result of intensive, serious and non-collusive
3 negotiations between the Parties. Accordingly, the Court preliminarily finds that the Stipulation of
4 Settlement was entered into in good faith.

5 3. The Court hereby GRANTS conditional certification of the provisional Vacation Class
6 and Waiting Time Penalty Class (collectively, “the Class” and “Class Members”), in accordance with
7 the Stipulation of Settlement, for the purposes of this Settlement only. The “Vacation Class” is defined
8 as all non-union employees who were employed by the Released Parties in California and whose
9 employment terminated during the Vacation Class Period who were eligible to be paid vacation wages.
10 The Waiting Time Penalty Class” is defined as all members of the Vacation Class whose employment
11 terminated during the Waiting Time Penalty Class Period. The “Vacation Class Period” is the period
12 beginning April 15, 2009 through the date of Preliminary Approval. The “Waiting Time Penalty Class
13 Period” is the period beginning April 15, 2010 through the date of Preliminary Approval.

14 4. The Court hereby authorizes the retention of Rust Consulting as Settlement Administrator
15 for the purpose of the Settlement.

16 5. The Court hereby conditionally finds that Graham Hollis APC may act as counsel for the
17 Class, and that Plaintiff Linda DelaTorre may act as class representative for the Class.

18 6. The Court hereby APPROVES the Notice of (1) Preliminary Approval of Class Action
19 Settlement; (2) Final Approval Hearing; (3) Class Members’ Right to Object or Request Exclusion; and
20 (4) Requirement to Return a Claim Form to Receive a Monetary Payment from the Settlement (the
21 “Notice”), attached to the Stipulation of Settlement as Exhibit 2. The Court finds that the Notice, along
22 with the related notification procedure contemplated by the Stipulation of Settlement, constitutes the
23 best notice practicable under the circumstances and is in full compliance with the applicable laws and
24 the requirements of due process. The Court further finds that the Notice appears to fully and accurately
25 inform the Class Members of all material elements of the proposed Stipulation of Settlement, of the
26 Class Members’ right to be excluded from the Settlement, and of each Class Member’s right and
27 opportunity to object to the Settlement. Subject to the terms of the Stipulation of Settlement, the Notice
28 shall be mailed via first-class mail to the most recent known address of each Class Member within the

1 timeframe specified in the Stipulation of Settlement.

2 7. The Court hereby APPROVES the proposed procedure for Class Member exclusion from
3 the Settlement, which is to submit a written statement requesting exclusion to the Settlement
4 Administrator no later than sixty (60) days following the date on which the Settlement Administrator
5 first mails the Notice and Claim Forms to Class Members. Any Class Member who submits a valid and
6 timely request for exclusion shall not be a Member of the Class, shall be barred from participating in the
7 Settlement and shall receive no benefit from the Settlement.

8 8. The Court hereby APPROVES the proposed Claim Form for use in administering the
9 Settlement, attached to the Stipulation of Settlement as Exhibit 1. The Claim Form must be mailed to
10 Class Members along with the Notice. Subject to the terms of the Stipulation of Settlement, Class
11 Members must sign, date and return completed claim forms to the Settlement Administrator postmarked
12 no later than sixty (60) days following the date on which the Settlement Administrator first mails the
13 Notice Packets to Class Members in order to receive a monetary payment.

14 9. The Court further ORDERS that Class Counsel shall file a motion for approval of the Fee
15 and Expense Award and the Service Payment, with the appropriate declarations and supporting
16 evidence, by December 5, 2014 to be heard at the same time as the motion for Final
17 Approval of the Settlement.

18 10. The Court further ORDERS that Class Counsel shall file a motion for Final Approval of
19 the Settlement, with the appropriate declarations and supporting evidence, including a declaration setting
20 forth the identity of any Class Members who request exclusion from the Settlement, by
21 December 5, 2014.

22 11. The Court further ORDERS that each Class Member shall be given a full opportunity to
23 object to the proposed Settlement and request for attorneys' fees, and to participate at a Final Approval
24 Hearing, which the Court sets to commence on January 13, 2015 at 10:00 am in Courtroom 5 of the
25 United States District Court, Northern District of California, San Jose Division. Any Class Member
26 seeking to object to the proposed Settlement shall file such objection in writing with the Court and shall
27 serve such objection on Class Counsel and Defendant's Counsel no later than sixty (60) days following
28 the date on which the Settlement Administrator first mails the Notice Packets to Class Members. In

1 addition, any attorney who intends to represent a Class Member objecting to the Settlement must file a
 2 notice of appearance with the Court and serve counsel for all Parties no later than sixty (60) days
 3 following the date on which the Settlement Administrator first mails the Notice Packets to Class
 4 Members. Any Class Member who fails to file and serve these materials shall be foreclosed from
 5 objecting to the proposed Settlement, unless otherwise ordered by the Court.

6 12. The Court Orders the following implementation schedule for further proceedings:

7 8 9	Deadline for Defendants to provide names and addresses of Settlement Class Members to the Settlement Administrator and Class Counsel	No later than forty five (45) calendar days after Defendant receive the order granting preliminary approval of the Stipulation.
10 11	Deadline for Settlement Administrator to mail notice packets to Settlement Class Members	No later than fourteen (14) calendar days of receipt of the Class List from Defendant.
12 13 14	Deadline for postmark by registered mail of any Request for Exclusion	No later than sixty (60) calendar days after the mailing of the Notice of Class Settlement by the Settlement Administrator.
15 16	Deadline for Submission of Objections by Class Members	No later than sixty (60) calendar days after the mailing of the Notice of Class Settlement by the Settlement Administrator.
17 18	Deadline for the Class Members to Cash their Settlement Checks	One hundred and eighty (180) calendar days from the mailing of the check.
19 20	Deadline for the Settlement Administrator to submit Declaration of Diligence	Five (5) court days before the date of the final approval hearing
21 22	The Final Approval Hearing	January 13, 2015 at 10:00 a.m.
23 24 25 26 27	Payment Obligation and Class Release Date	45 calendar days after: (a) service of notice of entry of the Final Approval Order and Judgment on all Parties/objectors, with no appeals or requests for review being taken; or (b) orders affirming Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies
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1 2 3	Deadline for Defendant to deposit the full amount necessary to fund all required Settlement payments	No later than 7 calendar days after Payment Obligation and Class Release Date
4 5 6	Deadline for the Settlement Administrator to mail or wire all required payments to Class Representative, Class Counsel, the LWDA, and the Class Members who submitted valid and timely claim forms	No later than fourteen (14) calendar days after the Payment Obligation and Class Release Date.

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8 13. The Court further ORDERS that, pending further order of this Court, all proceedings in
9 this Lawsuit except those contemplated herein and in the Stipulation of Settlement are stayed.

10 14. The Court further ORDERS that to facilitate administration of this Settlement, all Class
11 Members are hereby enjoined from filing or prosecuting any claims, cases, suits or administrative
12 proceedings (including filing or pursuing claims with the California Division of Labor Standards
13 Enforcement) regarding claims released by the Settlement unless and until such Class Members have
14 submitted valid and timely Exclusion Letters with the Settlement Administrator.

15 15. If the Court grants Final Approval of the Settlement and enters judgment, Class Members
16 and their successors shall conclusively be deemed to have given a release, as set forth in the Stipulation
17 of Settlement Agreement and Notice Packet, against the Released Parties, and all Class Members and
18 their successors shall be permanently enjoined and forever barred from asserting any claim covered by
19 the Class Released Claims.

20 16. If for any reason the Court does not execute and file a Final Approval Order and
21 Judgment, the proposed Settlement subject to this Order and all evidence and proceedings had in
22 connection with the Settlement shall be null and void.

23 17. The Court may, for good cause, extend any of the deadlines set forth in this Order or
24 adjourn or continue the final approval hearing without further notice to the Class.

25 **IT IS SO ORDERED.**

26 Dated: July 30, 2014

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28 HONORABLE PAUL S. GREWAL
United States Magistrate Judge