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Superior Court of California  
County of Los Angeles

**MAY 31 2018**

Sherri R. Carter, Executive Officer/Clerk of Court

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11 *Attorneys for Plaintiffs and the Putative Class*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 CLAUDIA GRANCIANO, individually and  
on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17  
 18 SOUTHWIND FOODS, LLC, a California  
 Limited Liability Company; STAFFPOINT,  
 19 LLC, a California Limited Liability Company;  
 and DOES 1-50, inclusive,

20 Defendants.

21  
 22 SOUTHWIND FOODS, LLC,

23 Cross-Complainant,

24 v.

25 STAFFPOINT, LLC, ALLIANCE  
 PROFESSIONAL BUSINESS SOLUTIONS,  
 26 INC., ASHWYN SYAL AND ROES 1-25,

27 Cross-Defendants.  
 28

Case No. BC538900

CLASS ACTION

**PLAINTIFFS' SUPPLEMENTAL BRIEF  
IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: June 21, 2018  
 Time: 2:00 P.M.  
 Dept.: 14 (Spring Street Courthouse)

*Assigned for All Purposes to:  
Hon. Kenneth R. Freeman,  
Dept. 14 (Spring Street)*

Action Filed: March 11, 2014  
 Trial Date: None

**BOUCHER LLP**  
 21600 Oxnard Street, Suite 600  
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**FAKED**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Named Plaintiffs, Claudia Granciano and Ricardo Contreras, respectfully submit this supplemental brief in support of their pending Motion for Preliminary Approval of Class Action Settlement in compliance with the Court’s April 26, 2018 Order (“Order”). The parties have revised settlement terms to address the Court’s concerns, as detailed below.

**II. SETTLEMENT TERMS AND EVALUATION – FAIR, ADEQUATE AND REASONABLE**

**A. Proposed terms of the settlement**

**1. “Provide a ‘not to exceed’ figure for attorney costs”. See Order<sup>1</sup> at p. 2.**

The parties have amended the settlement agreement to provide a “cap” or “not to exceed” amount of \$26,000 for Class Counsel’s request for reimbursement of litigation costs and any order thereon. See Boucher Supp. Decl., Ex. 2: Amended Stipulation Regarding Class Action Settlement and Release (“Amended Settlement Agreement”) at ¶¶ 1.5 and 2.24.<sup>2</sup>

**2. “Extend the check-cashing deadline (¶ 2.21.a) to at least 180 days from the date of issuance”. See Order at p. 2.**

The parties have amended the settlement agreement to extend the check-cashing deadline to 180 days from the date of issuance. See Boucher Supp. Decl., Ex. 2 at ¶ 2.21 and 2.21(a).

**3. “The formula for calculating individual settlement payments (¶ 2.22) will not consume the Net if any Class Member opts out. Consider revising the formula so that each Class Member’s Compensable Workweeks are divided by the total Compensable Workweeks for all class members who do not opt out (i.e., “Settlement Class Members”).”**

The parties have amended the settlement agreement to correct this potential issue regarding calculation of individual settlement payments. The parties propose that, to the extent any class member validly requests exclusion from the proposed settlement, the portion of the Net Settlement

<sup>1</sup> For the Court’s convenience with review, a true and correct copy of the April 26, 2018 Order is attached as Exhibit 1 to the Supplemental Declaration of Raymond P. Boucher filed herewith.

<sup>2</sup> The red-lined version of the Amended Settlement Agreement, tracking edits from the original agreement, is attached as Exhibit 3 to Mr. Boucher’s supplemental declaration.

1 Fund that would have been paid to the excluded Class Member(s) will be distributed on an equal,  
2 *pro rata* basis among all Settlement Class Members as part of their Individual Settlement  
3 Payment. *See* Boucher Supp. Decl., Ex. 2 at ¶ 2.22.

4 **B. “The necessity of including a § 1542 release as to the putative class members.  
5 In wage and hour class action lawsuits, the court will not approve a CC§ 1542  
6 waiver as to putative class members, even as to released claims. Though not  
7 explicitly titled as such, ¶ 2.10 uses language strongly resembling that which is  
8 typically used in §1542 waivers. Please explain why this broad release of  
9 unknown claims is appropriate as to the putative class members.” Order at  
10 pp. 2-3.**

11 The parties have amended the settlement agreement to remove the suggestive language at  
12 issue and to make clear that the release of claims by Settlement Class Members does not include a  
13 Civil Code section 1542 release. *See* Boucher Supp. Decl., Ex. 2 at ¶¶ 1.34(d), 2.10. In fact,  
14 Paragraph 1.34(d) now states in bold, underlined text: **“In other words, the releases  
15 contemplated by Settlement Class Members are not blanket waivers of California Civil Code  
16 section 1542 for all claims, potential or actual, known or unknown, for violations of  
17 California’s Labor Code, Wage Orders or FLSA by current and former employees of  
18 Defendants.”** *Id.* Nowhere in the Amended Settlement Agreement is there any language either  
19 suggesting or stating that Settlement Class Members, other than the named Plaintiffs, are releasing  
20 claims under Civil Code section 1542. Accordingly, this issue is resolved.

18 **III. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS**

19 **A. “Delete all language indicating that class members may only be heard at final  
20 approval if they have complied with all objection procedures. (Settlement  
21 Agreement, ¶ 2.18.) Modify class notice accordingly. (pg. 7).” Order at p. 3.**

22 The parties have amended the settlement agreement and class notice to remove the limiting  
23 language regarding preconditions to being heard at the Final Approval Hearing. *See* Boucher  
24 Supp. Decl., Ex. 2 at ¶ 2.18. Accordingly, this issue is resolved.  
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1 **IV. CY PRES DISTRIBUTION**

2 **A. “Modify the *cy pres* provision to comply with Code of Civil Procedure § 384, as**  
3 **revised in 2017. Unless, for good cause, the Court makes a specific finding that**  
4 **an alternative distribution would better serve the public or class interest,**  
5 **uncashed checks must be distributed in accordance with CCP § 384. (See**  
6 ***Cundiff, supra*, 167 Cal.App.4<sup>th</sup> at 729; 4 Witkin, Cal. Proc. 5<sup>th</sup> Plead § 331**  
7 **(2008).)” Order at p. 4.**

8 The parties agree that “good cause” exists for the Court to order a distribution of any  
9 uncashed checks to the State of California Unclaimed Wages Fund and request said order. *See*  
10 *Boucher Supp. Decl., Ex. 2 at ¶ 2.21(a)*. Specifically, the parties believe that good cause exists for  
11 this distribution because the unclaimed funds include unclaimed wages of employees that will be  
12 held by the State of California for the benefit of said employees, who may request receipt of  
13 payment from the State of California Unclaimed Wages Fund. *Id.*

14 However, the parties have also agreed to an alternate distribution, in the event the Court  
15 does not make a finding of good cause for the parties’ preferred distribution, which fully complies  
16 with the newly revised Code of Civil Procedure section 384 without a finding of “good cause”.  
17 *See Boucher Supp. Decl., Ex. 2 at ¶ 2.21(a) and (a)(i)*. The parties’ alternate proposal is for 25% of  
18 unclaimed funds to be distributed to the State Treasury for deposit in the Trial Court Improvement  
19 and Modernization Fund, and for 75% be distributed to the State Treasury for deposit into the  
20 Equal Access Fund of the Judicial Branch. *See Boucher Supp. Decl., Ex. 2 at ¶ 2.21(a)(i)*.

21 While parties need only allocate 25% of such funds to the Equal Access Fund and are  
22 permitted to allocate 50% of such funds to nonprofit organizations under Code of Civil Procedure  
23 section 384, “additional funds may be allocated by the court to the Equal Access Fund of the  
24 Judicial Branch, to be distributed in accordance with Sections 6216, inclusive, of the Business and  
25 Professions Code.” Code Civ. Proc. § 384(b)(3)(C). Accordingly, the parties’ alternate distribution  
26 proposal complies with Code of Civil Procedure section 384(b)(3)(A),(B), and (C) by allocating  
27 25% to the Trial Court Improvement and Modernization Fund and 75% to the Equal Access Fund  
28 (i.e., 25% plus 50% in “additional funds”).

1 **V. NOTICE TO CLASS MEMBERS**

2 **A. “Why the content of the notice complies with Cal. Rules of Court, rule**  
3 **3.766(d).” Order at p. 4.**

- 4 **1. “Modify location of final approval hearing (Notice, pgs. 2 and 7) to 312**  
5 **N. Spring Street, Los Angeles, CA 90012 in Department 14.” Order at**  
6 **p. 4.**

7 The parties have modified the Class Notice by listing the new location for the proposed  
8 Final Approval Hearing. *See* Boucher Supp. Decl., Ex. 2(A) at pp. 2, 7.<sup>3</sup>

- 9 **2. “Correct the release of claims to indicate that Released Claims are**  
10 **those asserted in the Third Amended Complaint, rather than the**  
11 **Second Amended Complaint.” Order at p. 4.**

12 The parties have modified the release language in the Class Notice to reflect the release of  
13 claims in the Third Amended Complaint. *See* Boucher Supp. Decl., Ex. 2(A) at p. 8.

- 14 **3. “The release disclosed in the Notice must include the full release**  
15 **language, as stated in ¶¶ 2.10, 1.34a-d, and 1.37 of the Settlement**  
16 **Agreement.” Order at p. 4.**

17 The parties have modified the release language in the Class Notice to mirror the release  
18 language in the Amended Settlement Agreement. *See* Boucher Supp. Decl., Ex. 2(A) at pp. 7-8.

- 19 **4. “Disclose the ‘not to exceed’ figure for attorney costs”. Order at p. 4.**

20 The parties have modified the Class Notice to disclose the “not to exceed” upper limit to  
21 any request for reimbursement of costs incurred by Class Counsel and order thereon. *See* Boucher  
22 Supp. Decl., Ex. 2(A) at p. 4.

23 **B. COSTS AND FEES**

- 24 **1. “Provide information regarding any agreement about how attorney**  
25 **fees will be paid, including fee splitting and whether the client has given**  
26 **written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Cal.**  
27 **Rules of Professional Conduct, § 2-200; Cal Rules of Court, rule**  
28 **3.769.)” Order at p. 5.**

Plaintiffs’ counsel, Boucher LLP and Law Offices of Sahag Majarian II, have agreed to  
equally share any award of attorneys’ fees for the work performed on behalf of Plaintiffs and Class  
Members and Plaintiffs have each agreed in writing to the proposed “50-50” fee split. *See* original

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<sup>3</sup> The red-lined version of the Class Notice is attached as Exhibit 3(A) to Mr. Boucher’s  
supplemental declaration.

1 Declaration of Raymond P. Boucher in Support of Plaintiffs’ Motion for Preliminary Approval of  
2 Class Action Settlement at ¶ 49. For the Court’s convenience with review, this information is also  
3 set forth in Mr. Boucher’s supplemental declaration at ¶ 6.

4 **C. PAGA**

5 **1. “Proof of service of the proposed settlement on the LWDA. (Labor**  
6 **Code § 2699(1)(2).” Order at p. 5.**

7 Plaintiffs’ counsel are attaching as Exhibit 4 to Mr. Boucher’s supplemental declaration a  
8 true and correct copy of the proof of service of the original settlement agreement on the California  
9 LWDA, a March 6, 2018 auto-reply email from the California Labor and Workforce Development  
10 Agency’s DIR PAGA Unit confirming receipt of submission of the original settlement agreement.  
11 *See* Boucher Supp. Decl., Ex. 4.

12 **D. EXHIBITS TO THE MOTION**

13 **1. “Proposed schedule for class notice, objection, opt-out, claim**  
14 **submission, motion for final approval and attorney fees, final**  
15 **accounting and, if applicable, a Final Distribution of Residual Funds. A**  
16 **[Proposed] Order granting preliminary approval, which includes the**  
17 **applicable schedule items listed above, must be lodged with the**  
18 **motion.” Order at p. 5.**

19 A proposed schedule is attached to Mr. Boucher’s supplemental declaration as Exhibit 5,  
20 which was prepared with certain assumptions. Boucher Decl. at ¶ 9, Ex. 5. For example, certain  
21 dates are based off the “effective date” for the settlement, which could be different dates  
22 depending on whether any objections are made to the settlement or any appeals are raised. *Id.*  
23 Likewise, other dates are based off a proposed Final Approval Hearing date not yet confirmed. *Id.*  
24 As ordered, the proposed schedule is also incorporated into the Amended [Proposed] Order  
25 Granting Preliminary Approval lodged concurrently herewith.

26 **2. “Please lodge a copy of the proposed Third Amended Complaint for the**  
27 **Court’s review.” Order at p. 5.**

28 A redlined copy of Plaintiffs’ Proposed Third Amended Complaint, showing the proposed  
29 edits to the operative Second Amended Complaint (adding a cause of action under the FLSA and  
30 modifying the class definitions to match the settlement class definitions), is attached to Mr.

1 Boucher’s supplemental declaration as Exhibit 6. *See* Boucher Supp. Decl., Ex. 6. A signed copy  
2 is also lodged as Exhibit B to the Amended [Proposed] Order Granting Preliminary Approval  
3 lodged concurrently herewith.

4 **E. OTHER INFORMATION**

- 5 **1. “If the Settlement Agreement is modified pursuant to this checklist,**  
6 **please submit both a red-lined copy showing changes made as well as a**  
7 **final version signed by all parties. Modify notice and claim form to**  
8 **match any alterations to the Settlement Agreement.” Order at p. 5.**

8 The parties have modified the settlement agreement. Attached as Exhibit 2 to Mr.  
9 Boucher’s declaration is a true and correct copy of the executed Amended Settlement Agreement  
10 signed by all parties and their counsel, with the revised Class Notice attached thereto as Exhibit  
11 2(A). Attached as Exhibit 3 is a true and correct copy of the red-lined Amended Settlement  
12 Agreement, with the red-lined Class Notice attached thereto as Exhibit 3(A). *See* Boucher Supp.  
13 Decl., Exs. 2, 2(A), 3, 3(A). There is no claims filing requirement or claim form in this settlement,  
14 so no such form was submitted.

- 15 **2. “Modify notice to match any alterations to the Settlement Agreement.”**  
16 **Order at p. 5.**

17 The parties have also modified the Class Notice to reflect the amendments to the settlement  
18 agreement and to comply with the Court’s Order. *See* Boucher Supp. Decl., Ex. 2(A) with redlined  
19 copy at Ex. 3(A).

20 **VI. CONCLUSION**

21 The parties have fully complied with every instruction provided by the Court and  
22 respectfully request the Court’s preliminary approval of the proposed class action settlement.  
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**BOUCHER LLP**


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DATED: May 31, 2018

Respectfully submitted,

BOUCHER LLP

By:   
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RAYMOND P. BOUCHER  
SHEHNAZ M. BHUJWALA  
NEIL M. LARSEN

*Attorneys for Plaintiffs and the Putative Class*



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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

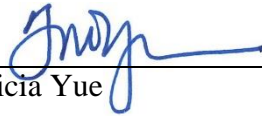
At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21600 Oxnard Street, Suite 600, Woodland Hills, CA 91367-4903.

On May 31, 2018, I served true copies of the following document(s) described as **PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action as follows:

**BY ELECTRONIC SERVICE:** Pursuant to the Court's Order Authorizing Electronic Service entered in this case, I provided the document(s) listed above electronically on the CASE ANYWHERE Website to the parties on the Service List maintained on the CASE ANYWHERE Website for this case. Case Anywhere is the on-line e-service provider designated in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 31, 2018, at Woodland Hills, California.

  
\_\_\_\_\_  
Tricia Yue