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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 JAIMIE QUINBY, LINDA GOMES, and
17 ERIC FONTES, on behalf of themselves
and all others similarly situated,

18 Plaintiffs,

19 v.

20 ULTA SALON, COSMETICS &
21 FRAGRANCE, INC.,

22 Defendant.
23

Case No. CV-15-4099 WHO

**ORDER PROVISIONALLY
CERTIFYING SETTLEMENT CLASS
AND PRELIMINARILY APPROVING
CLASS SETTLEMENT**

Judge: Hon. William H. Orrick
Date: September 14, 2016
Time: 2:00 p.m.
Crtrm.: 2, 17th Floor

Trial Date: None Set

1 1. A hearing regarding this matter came before this Court on September 14,
2 2016, with The Liu Law Firm, P.C. and Rosen Bien Galvan and Grunfeld LLP (“Plaintiffs’
3 Counsel”) appearing as counsel for Plaintiffs JAIMIE QUINBY, ERIC FONTES, AND
4 LINDA GOMES (“Plaintiffs”), and Littler Mendelson, P.C. appearing as counsel for
5 Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC. (“Defendant”). Based
6 upon the Court’s review of Plaintiffs’ Notice of Motion and Motion for Order
7 Provisionally Certifying Settlement Class and Preliminarily Approving Class Settlement,
8 the Memorandum of Points and Authorities in Support Thereof, the Declarations of
9 Jennifer Liu (“Liu Declaration”) and Gay Crosthwait Grunfeld (“Grunfeld Declaration”)
10 and the exhibits attached thereto, and the Supplemental Declaration of Jennifer Liu
11 (“Supplemental Liu Declaration”) and the exhibits attached thereto, the Court makes the
12 following observations and findings and orders as follows.

13 **I. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

14 2. The Court finds that the proposed settlement is the product of serious,
15 informed, non-collusive negotiations that occurred with the assistance of an experienced
16 wage and hour mediator, Mark Rudy; the proposed settlement has no obvious deficiencies;
17 the proposed settlement does not improperly grant preferential treatment to Class
18 Representatives or segments of the Class; and the proposed settlement amount falls within
19 the range of possible approval given the risks of continued litigation. Accordingly, the
20 Court grants preliminary approval of the class settlement memorialized in the Joint
21 Stipulation of Settlement and Release (“Settlement Agreement”), attached to the Liu
22 Declaration as **Exhibit C**. This Order incorporates by reference the definitions in the
23 Settlement Agreement, and all terms defined therein shall have the same meaning as set
24 forth in the Settlement Agreement.

25 **II. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

26 3. Plaintiffs and the proposed Class meet all of the requirements for
27 certification of a settlement class under Federal Rule of Civil Procedure 23(a) and (b)(3).

28 4. Plaintiffs satisfy Federal Rule of Civil Procedure 23(a)(1) because the

1 settlement class totals approximately 230 members (“Class Members”).

2 5. Plaintiffs satisfy Federal Rule of Civil Procedure 23(a)(2) because they and
3 Class Members share numerous common factual and legal issues that go to the core of
4 Plaintiffs’ claims that Defendant misclassified them and Class Members as exempt
5 executives. Plaintiffs allege that they and Class Members performed common job duties,
6 and that these common job duties rendered them ineligible for the executive exemption
7 under California law. Other common issues include, but are not limited to, whether
8 Defendant failed to provide meal breaks to Plaintiffs and Class Members, and whether
9 Defendant maintained accurate time records for all hours worked by Plaintiffs and Class
10 Members.

11 6. Plaintiffs satisfy Federal Rule of Civil Procedure 23(a)(3) because Plaintiffs
12 allege that they shared the same job title and performed the same job duties as other Class
13 Members, that Defendant misclassified Plaintiffs and other Class Members as exempt from
14 overtime pursuant to the same company policy, and that they suffered the same loss of
15 overtime wages and missed meal breaks as a result of Defendant’s conduct. Because
16 Plaintiffs allege that they have suffered the same injuries as other Class Members, and that
17 those injuries arise from the same course of conduct, the proposed Class satisfies the
18 typicality requirement.

19 7. Plaintiffs satisfy Federal Rule of Civil Procedure 23(a)(4) because neither
20 the Named Plaintiffs nor Plaintiffs’ Counsel have any conflicts of interest with other Class
21 Members. Additionally, the Named Plaintiffs and Plaintiffs’ Counsel have vigorously
22 prosecuted the claims on behalf of the Class and will continue to do so.

23 8. Plaintiffs satisfy the predominance requirement under Federal Rule of Civil
24 Procedure 23(b). Here, Plaintiffs’ and Class Members’ common factual allegations and
25 common legal theory – that Defendant violated state wage and hour laws by misclassifying
26 them as exempt employees and failing to pay them overtime wages – predominate over
27 any factual or legal variations among Class Members.

28 9. Plaintiffs also satisfy the superiority requirement under Federal Rule of Civil

1 Procedure 23(b), because the cost of litigating each Class Member’s claims on an
 2 individual basis would be greater than each Class Member’s theoretical maximum
 3 recovery. Therefore, a class action is the most suitable mechanism to fairly, adequately,
 4 and efficiently resolve Plaintiffs’ and Class Members’ claims.

5 10. The Court provisionally certifies the following class under Federal Rule of
 6 Civil Procedure 23(e), for settlement purposes:

7 All current and former General Managers employed by Defendant in its
 8 California retail store locations at any time from September 9, 2011 to
 9 September 19, 2016 or the date of this Order, whichever occurs first (the
 “Class” or “Class Members”).

10 Provisional certification of the settlement class shall be solely for settlement purposes and
 11 without prejudice to any party, in the event that the Settlement Agreement is not finally
 12 approved.

13 **III. APPOINTMENT OF PLAINTIFFS’ COUNSEL AS CLASS COUNSEL**

14 11. The applications of The Liu Law Firm, P.C. and Rosen Bien Galvan &
 15 Grunfeld LLP to be appointed as Class Counsel are granted because they meet all of the
 16 requirements of Federal Rule of Civil Procedure 23(g). Rule 23(g) sets forth four criteria
 17 that this Court must consider in evaluating the adequacy of proposed counsel: (1) “the
 18 work counsel has done in identifying or investigating potential claims in the action;” (2)
 19 “counsel’s experience in handling class actions, other complex litigation, and the types of
 20 claims asserted in the action;” (3) “counsel’s knowledge of the applicable law; and (4) “the
 21 resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A).
 22 The Court may also consider any other matter pertinent to counsel’s ability to fairly and
 23 adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(1)(B).

24 12. Plaintiffs’ Counsel meet all of these criteria. Plaintiffs’ Counsel have done
 25 substantial work identifying, investigating, prosecuting, and settling Plaintiffs’ and Class
 26 Members’ claims. Additionally, Plaintiffs’ Counsel have substantial experience
 27 prosecuting and settling employment class actions, including wage and hour class actions,
 28 and are well-versed in both wage and hour law and class action law. Courts have

1 repeatedly found Plaintiffs' Counsel to be adequate class counsel in wage and hour class
2 actions and other class actions. The work that The Liu Law Firm, P.C. and Rosen Bien
3 Galvan and Grunfeld LLP have performed both in litigating and settling this case
4 demonstrates their commitment to the class and to representing Class Members' interests.

5 **IV. NOTICE AND SETTLEMENT PROCEDURE**

6 13. Attached as **Exhibit B** to the Supplemental Liu Declaration is Plaintiffs'
7 Proposed Notice of Settlement of Class Action Lawsuit and Fairness Hearing ("Proposed
8 Notice").

9 14. The Court finds that the Proposed Notice fully complies with due process
10 and Federal Rule of Civil Procedure 23. The Proposed Notice provides the best notice
11 practicable under the circumstances. It states the nature of the action, the definition of the
12 class certified, and the class claims, issues, and defenses; it advises Class Members of their
13 right to appear at the Fairness Hearing, opt-out, or object, and it informs Class Members of
14 the binding effect of a class judgment. Additionally, the Proposed Notice describes the
15 terms of the settlement, informs the class about the allocation of attorneys' fees, and
16 provides specific information regarding the date, time, and place of the final approval
17 hearing.

18 15. The Court therefore approves the Proposed Notice and directs its distribution
19 to Class Members as outlined below.

20 16. The Court hereby adopts the following settlement procedure:

- 21 a. Within fourteen (14) days of this Order, Defendant will provide the
22 Settlement Claims Administrator, in electronic form, for all Class
23 Members, the following information: name, Social Security Number,
24 last known addresses, telephone numbers, dates of employment, most
25 recent annual salaries as a General Manager, and workweeks worked
26 in the General Manager job title during the class period ("Class List");
27 b. Within ten (10) days of receiving the Class List from Defendant, the
28 Settlement Claims Administrator will mail to all Class Members, via

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- First Class Unites States Mail, postage prepaid, the Court-approved Notice of Settlement of Class Action Lawsuit and Fairness Hearing;
- c. Class Members will have forty-five (45) days from the mailing of the Notice and no later than seventy-five (75) days from the date of this Order to opt out of the settlement or object to it;
 - d. Not later than fifteen (15) days before the Fairness Hearing, Plaintiffs will submit a Motion for Final Approval;
 - e. Any application for an award of attorneys’ fees, costs, and expenses to Plaintiffs’ Counsel, and any application for service awards to Plaintiffs, shall be filed at least twenty-one (21) days before the last day for any Class Member to object to the settlement;
 - f. The Court will hold a final fairness hearing on January 18, 2017 at 2:00 p.m. at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, Courtroom 2, 17th floor;
 - g. If the Court grants Plaintiffs’ Motion for Final Approval of Class Action Settlement, the Court will issue a Final Order and Judgment;
 - h. If no Party appeals the Court’s Final Order and Judgment, the “Effective Date” of the settlement will be the day after the deadline for taking an appeal has passed; if an individual appeals the Court’s Final Order and Judgment, the “Effective Date” shall be the day after all appeals are resolved in favor of final approval;
 - i. Any unclaimed settlement funds after each distribution shall be redistributed as specified in Section 3.1(D)-(E) of the Settlement Agreement; if the amount remaining after each redistribution is equal to or greater than \$5,000, the remaining funds will be redistributed to Class Members who have timely cashed their Settlement Checks, with the cost of the redistribution to be paid from the fund; and if the

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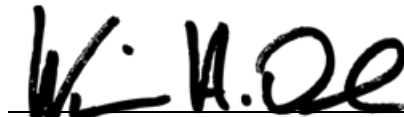
amount remaining is less than \$5,000, the remaining funds will be
donated to the Charity under the *cy pres* doctrine; and

j. The Parties shall abide by all terms of the Settlement Agreement.

17. The Court also hereby vacates the class certification briefing deadlines set in
the Court's Order dated March 9, 2016, the class certification hearing scheduled for
January 18, 2017, and the Case Management Conference scheduled for February 21, 2017.

IT IS SO ORDERED.

DATED: September 22, 2016



William H. Orrick
United States District Judge