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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANIEL A. GUTIERREZ, ET AL.,
PLAINTIFFS,
VS.
SCHMID INSULATION
CONTRACTORS, INC., ET AL.,
DEFENDANTS.

Case No. 2:08-cv-6010 DSF (JCx)

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND CLASS
CERTIFICATION**

WHEREAS, the motion of Plaintiffs Daniel Gutierrez, Arturo Navarrete, and Emiliano Reyna for class certification, preliminary approval of settlement, approval of the form and manner of notice to the class, and other matters, having been filed on October 17, 2008, came under this Court's consideration;

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1 WHEREAS, Plaintiffs have alleged claims against Defendants for violations
2 of California wage and hour laws for denying pay for all hours worked to their
3 installation personnel, including pay for overtime, meal breaks, time driving to and
4 from company-assigned work sites, time spent setting up and performing
5 administrative tasks, and time spent loading, maintaining, and unloading the
6 company product and equipment, and further alleged claims that Defendants'
7 installer personnel were required not to record on their time records all time spent at
8 work, were not provided adequate wage statements, and were subjected to unlawful
9 deductions taken from their wages.
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13 WHEREAS, Plaintiffs additionally alleged violations of California's Unfair
14 Competition Law, Business and Professions Code Section 17200 *et seq.* ("UCL"),
15 and sought interest, penalties, restitution, and injunctive relief.
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17 WHEREAS, the Defendants expressly deny the allegations of wrongdoing
18 and violations of law alleged in this action, and further deny liability whatsoever to
19 Plaintiffs or to the Class Members.
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21 WHEREAS, Class Counsel have engaged in extensive discussions and
22 negotiations with Defendants and their counsel concerning a resolution of the issues
23 raised in this action, including participating in two days of mediation sessions that
24 were conducted by David Rotman of Gregorio, Haldeman, Piazza, Rotman, Frank
25 & Feder and engaging in substantial post-mediation discussion with Mr. Rotman
26 and with each other.
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1 WHEREAS, the parties have proposed a settlement of the action, the terms of
2 which are embodied in the Joint Stipulation of Settlement attached hereto as Exhibit
3 A (“Settlement Agreement”).
4

5 **IT IS HEREBY ORDERED:**

6 1. To the extent defined in the Joint Stipulation of Settlement attached
7 hereto as Exhibit A and incorporated herein by reference, the terms in this Order
8 shall have the meanings set forth therein.

9 2. Pursuant to the Settlement Agreement and Rule 23(a) and (b)(3) of the
10 Federal Rules of Civil Procedure, the Court hereby certifies this action as a class
11 action for purposes of settlement only. The Settlement Class is defined as follows:
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13 All persons who are employed or have been employed by Defendants
14 Western or by Schmid as installers in the construction field in
15 California to install building products between October 13, 2002,
16 through September 30, 2008.

17 3. The Settlement Class, however, will not include any person
18 who previously settled or released the claims covered by this Settlement, or
19 any person who previously was paid or received awards through civil or
20 administrative actions for the claims covered by this Settlement, or any
21 person who chooses to opt out.

22 4. This class is sufficiently numerous that joinder is not
23 practicable. The Class has more than 3,000 members.

24 5. For settlement purposes only, there are questions of law and
25 fact common to the members of the Class. The questions of law and fact
26 common to the members of the California Class include whether Installers
27 were paid for all hours worked at the appropriate rate of pay; whether
28 Installers were appropriately paid for drive time to and from their work

1 sites; whether Installers took the appropriate meal breaks or were
2 compensated for missed meal breaks; whether pay records accurately
3 recorded and provided to Installers all time worked; and whether Installers
4 are entitled to penalties for unpaid wages at termination. For settlement
5 purposes only, these common issues predominate over any individual issues.

6 4. For settlement purposes only, the claims of the Class Representatives
7 are typical of the claims of the members of the Class. The Representative Plaintiffs
8 base their claims on the same factual scenario as the Class, including the same
9 typical injury alleged that they have not been compensated for all hours worked.
10 Their claims are also all based on the same legal theory as the Class: that they are
11 entitled to be paid for all hours worked at the correct rate, to receive meal breaks,
12 and to have proper records kept of their hours.

13 5. For settlement purposes only, the proposed Class Representatives will
14 fairly and adequately protect the interests of the Class, as the interests of the
15 Representative Plaintiffs are coextensive with those of the members of the Class,
16 and Plaintiffs and the Class members share a common interest in Schmid and
17 Western's alleged failures to pay for all time worked at the appropriate rate of pay.

18 6. Named plaintiffs Daniel Gutierrez, Arturo Navarrete, and Emiliano
19 Reyna are appointed as Class Representatives for the Class defined above.

20 7. Lewis, Feinberg, Lee, Renaker & Jackson, P.C., Sullivan Taketa LLP,
21 and MALDEF are appointed as class counsel (Fed. R. Civ. Pro. 23(g)) to represent
22 the class defined above.

23 8. The Court hereby preliminarily approves a service payment in the
24 amount of \$10,000 each to Class Representatives Daniel Gutierrez, Arturo
25 Navarrete, and Emiliano Reyna.

26 9. The Court confirms Settlement Services, Inc., as the Claims
27 Administrator for the Settlement Class. The Court hereby preliminarily approves
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1 costs of administration payable to the Claims Administrator, estimated to be
2 approximately \$ 90,000.00.

3 10. Whether the proposed Settlement, attorneys' fees and costs to Class
4 Counsel, and the Class Representatives' enhancement awards should be finally
5 approved as fair, reasonable and adequate as to the Class Members will be
6 determined at the Fairness Hearing.

7 11. Subject to the receipt and consideration by the Court of any objections
8 to or comments on the Settlement Agreement at the hearing described in Paragraph
9 16 of this Order, the Court finds the Settlement Agreement and all of its terms to be
10 fair, just, equitable, and in the best interests of the members of the Class. The
11 proposed Settlement falls within the range of possible Settlement approval, was
12 negotiated at arms length, and is worthy of being presented to the Class Members
13 for their comments. The Court hereby preliminarily approves the Settlement under
14 Rule 23(e) of the Federal Rules of Civil Procedure.

15 12. By no later than December 1, 2008, the Claims Administrator shall
16 cause to be mailed by first class mail the Notice of Proposed Class Action
17 Settlement and Settlement Hearing (the "Notice") attached as Exhibit 1 to Exhibit
18 A, to the Joint Stipulation of Settlement hereto, to the current or last known address
19 of each Class Member.

20 13. The Notice to Class Members given in compliance with the provisions
21 set forth in Paragraph 12 above is hereby found to be the best notice practicable
22 under the circumstances, and constitutes due and sufficient notice, in full
23 compliance with the requirements of Rule 23(3) of the Federal Rules of Civil
24 Procedure, the Constitution of the United States, and any other applicable law.

25 14. All reasonable costs incurred in identifying and notifying Class
26 Members, as well as administering the Settlement, shall be paid as set forth in the
27 Settlement Agreement.
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1 15. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a
2 hearing (the “Settlement Hearing”) shall be held before the undersigned at 10:00
3 a.m. on February 23, 2009, in Courtroom 840, Los Angeles - Roybal, United States
4 District Court, District of California, to determine the fairness, reasonableness, and
5 adequacy of the proposed Settlement and whether it should be finally approved, and
6 to consider the motion of Class Counsel for attorneys’ fees, costs, and expenses and
7 the requested payment to Named Plaintiffs.

8 16. No Class Member shall be heard in opposition to the proposed
9 Settlement, or, if approved, the judgments and other orders to be entered thereon, to
10 the requested award of attorneys’ fees, costs, and expenses, or to the requested
11 payment to the Named Plaintiff, and no papers or briefs submitted by any such
12 person shall be accepted or considered by the Court unless, on or before January 15,
13 2009, such person has filed with the Clerk of the Court and served upon counsel for
14 all parties a written statement that indicates the specific basis for such person’s
15 objections, along with any supporting documentation.

16 17. On or before January 15, 2009, Plaintiff shall file a Motion for
17 Judgment and Final Approval of Settlement and Dismissal of Action With
18 Prejudice.

19 18. On or before January 15, 2009, Class Counsel shall file with the Court
20 and serve on all parties their motion for attorneys’ fees, costs, and expenses, and all
21 papers in support thereof.

22 19. Any Class Member who has met the requirements of paragraph 16
23 herein, or his or her representative, may appear at the Settlement Hearing in person
24 or by telephone, and be heard to the extent allowed by the Court in support of, or in
25 opposition to, the fairness, reasonableness and adequacy of the proposed
26 Settlement, the requested award of attorneys’ fees, costs, and expenses, and the
27 requested payment to Named Plaintiffs. Any Class Member who does not make his
28 or her objections as required by Paragraph 16 herein shall be deemed to have

1 waived such objection and shall forever be foreclosed from making any objection to
2 the fairness, reasonableness, and adequacy of the proposed Settlement, the
3 requested award of attorneys' fees and costs, and the requested payment to Named
4 Plaintiffs unless otherwise ordered by the Court.

5 20. The Court expressly reserves its right to continue the Settlement
6 Hearing from time to time without further direct notice to the Class.

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9 **IT IS SO ORDERED.**

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11 Dated: November 17, 2008



12 Judge Dale S. Fischer
13 United States District Judge

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