

1 Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
2 Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com
3 Daniel J. Kramer (SBN 314625)
dkramer@wilshirelawfirm.com
4 **WILSHIRE LAW FIRM**
5 3055 Wilshire Blvd., 12th Floor
6 Los Angeles, California 90010
7 Telephone: (213) 381-9988
8 Facsimile: (213) 381-9989

Attorneys for Plaintiff

FILED
KERN COUNTY SUPERIOR COURT
7/10/2024
BY Mata, Vanesa
DEPUTY

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF KERN**

11 MARTIN HERNANDEZ, individually, and on
12 behalf of all others similarly situated,

13 *Plaintiff,*

14 v.

15 KW CALIFORNIA, a corporation; KW
16 PLASTICS OF CALIFORNIA, an unknown
entity; and DOES 1 through 10, inclusive,

17 *Defendants.*

Case No.: BCV-23-100346

CLASS AND REPRESENTATIVE ACTION

[Assigned for all purposes to: Hon. T. Mark Smith, Dept. T-2]

~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[Filed with Notice of Motion and Motion, Memorandum of Points and Authorities, the Declaration of Justin F. Marquez]

PRELIMINARY APPROVAL HEARING

Date: July 10, 2024
Time: 8:30 a.m.
Dept: T-2

Complaint filed: February 3, 2023
FAC filed: July 25, 2023
Trial date: Not set

1 The Court has before it Plaintiff Martin Hernandez’ (“Plaintiff”) Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declaration of Justin F. Marquez, the Class Action and PAGA
4 Settlement Agreement and Class Notice (which is referred to here as the “Settlement
5 Agreement”), and good cause appearing, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
7 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
8 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
9 the terms set forth in the Settlement Agreement between Plaintiff Martin Hernandez and
10 Defendant KW Plastics of California (“Defendant”), attached to the Declaration of Justin F.
11 Marquez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement
12 as Exhibit 1.

13 2. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court, and appears to be presumptively valid,
15 subject only to any objections that may be raised at the Final Approval Hearing and final
16 approval by this Court. The Court notes that Defendant has agreed to create a common fund of
17 \$300,000.00 to cover (a) settlement payments to class members who do not validly opt out; (b)
18 a \$20,000.00 payment to the State of California, Labor & Workforce Development Agency for
19 its share of the settlement of claims for penalties under the Private Attorneys General Act, with
20 75% of which (\$15,000.00) will be paid to the LWDA and 25% (\$5,000.00) will be paid to
21 eligible Aggrieved Employees; (c) Class Representative service payment of up to \$10,000.00
22 for Plaintiff Martin Hernandez; (d) Class Counsel’s attorneys’ fees, not to exceed 33 1/3% of
23 the Gross Settlement Amount (\$100,000.00), and up to \$20,000.00 in costs for actual litigation
24 expenses incurred by Class Counsel; and (e) Settlement Administration Costs of up to
25 \$10,000.00.

26 3. The Court preliminarily finds that the terms of the Settlement appear to be within
27 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
28 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair

1 and reasonable to the class members when balanced against the probable outcome of further
2 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
3 significant informal discovery, investigation, research, and litigation have been conducted such
4 that counsel for the parties at this time are able to reasonably evaluate their respective positions;
5 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
6 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
7 the result of intensive, serious, and non-collusive negotiations between the Parties with the
8 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
9 that the Settlement Agreement was entered into in good faith.

10 4. A final fairness hearing on the question of whether the proposed settlement,
11 attorneys' fees and costs to Class Counsel, payment to the State of California, Labor &
12 Workforce Development Agency for its share of the settlement of claims for penalties under the
13 Private Attorneys General Act, and the class representative's enhancement award should be
14 finally approved as fair, reasonable and adequate as to the members of the class is hereby set in
15 accordance with the Implementation Schedule set forth below.

16 5. The Court provisionally certifies for settlement purposes only the following class
17 (the "Settlement Class"): "all persons employed by KW California in California as hourly-paid
18 or non-exempt employees during the Class Period."

19 6. "Class Period" means the period from February 3, 2019 through March 15, 2024.

20 7. The Court finds, for settlement purposes only, that the Settlement Class meets the
21 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
22 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
23 of law and fact that are common, or of general interest, to all Settlement Class Members, which
24 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
25 Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and adequately protect
26 the interests of the Settlement Class Members; and (5) a class action is superior to other
27 available methods for the fair and efficient adjudication of the controversy.

28 8. The Court appoints as Class Representative, for settlement purposes only,

1 Plaintiff Martin Hernandez. ~~The Court further preliminarily approves Plaintiff's ability to~~
2 ~~request an incentive award up to \$10,000.00.~~ TMS

3 9. The Court appoints, for settlement purposes only, Justin F. Marquez, Benjamin
4 H. Haber, and Daniel J. Kramer of Wilshire Law Firm, PLC as Class Counsel. The Court further
5 preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of
6 the Total Settlement Amount (\$100,000.00), and costs not to exceed \$20,000.00.

7 10. The Court appoints Apex Class Action, LLC as the Settlement Administrator with
8 reasonable administration costs estimated not to exceed \$10,000.00.

9 11. The Settlement Administrator will establish and maintain and use an internet
10 website to post information of interest to Class Members including the date, time and location
11 for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary
12 Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the
13 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class
14 Representative Service Payment, the Final Approval and the Judgment.

15 12. The Court approves, as to form and content the Class Notice, attached to the
16 Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the
17 Notice to Settlement Class Members satisfies due process, provides the best notice practicable
18 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
19 thereto.

20 13. Concurrently with mailing the Class Notice, the Settlement Administrator will
21 post a copy of the Class Notice with Spanish Translation on its website at least until the date of
22 the Final Approval Hearing.

23 14. The parties are ordered to carry out the Settlement according to the terms of the
24 Settlement Agreement.

25 15. Any class member who does not timely and validly request exclusion from the
26 settlement may object to the Settlement Agreement.

27 16. The Court orders the following Implementation Schedule:
28

1 2 3	Defendant to provide Class Data to the Settlement Administrator	15 days after notice of entry of the Court's order granting Motion for Preliminary Approval
4 5 6 7	Settlement Administrator to Provide Summary of Class Members, PAGA Members, Class Pay Periods, and PAGA Pay Periods in the Class Data	3 business days after receipt of the Class Data
8 9	Settlement Administrator to mail the Notice Packets and Post Class Notice on its Website	14 days after receipt of the Class Data from the Defendant
10 11 12 13	Response Deadline	45 days after Notice is mailed out by the Settlement Administrator, extended an additional 14 days for all Class Members whose notice is re-mailed
14 15 16 17	Deadline to Provide Written Objections, if any	45 days after Notice is mailed out by the Settlement Administrator, extended an additional 14 days for all Class Members whose notice is re-mailed
18 19 20	Deadline for Settlement Administrator to Provide Due Diligence Declaration	14 days before the date Plaintiff is required to file the Motion for Final Approval of the Settlement
21 22 23	Deadline to file Motion for Final Approval, Request for Attorney's Fees and Costs, and Service Award to Plaintiff	16 court days before hearing on Motion for Final Approval, which is <u>November 7, 2024</u>
24 25 26 27	Final Approval Hearing	<u>December 4, 2024</u> at <u>8:30</u> a.m./ p.m. , or first available date thereafter, in Department T-2. The hearing may be continued to another date without further notice to the

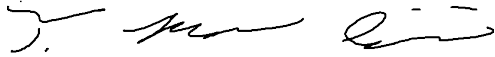
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Class Members.
--	----------------

17. The Court further ORDERS that, pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

IT IS SO ORDERED.

DATE: Signed: 7/10/2024 03:39 PM



Hon. T. Mark Smith
Kern County Superior Court

PROOF OF SERVICE

Hernandez v. KW California, et al.
BCV-100346

1
2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I, Jorge Grimaldy, state that I am employed in the aforesaid County, State of California; I
5 am over the age of eighteen years and not a party to the within action; my business address is 3055
6 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is
jgrimaldy@wilshirelawfirm.com.

7 On **June 7, 2024**, I served the foregoing **[PROPOSED] ORDER GRANTING**
8 **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
SETTLEMENT, on the interested parties by placing a true copy thereof, enclosed in a sealed
envelope by following one of the methods of service as follows:

9 Jay L. Rosenlieb, Esq. (SBN 109737)
10 jlr@kleinlaw.com
Vanessa F. Chavez, Esq. (SBN 266724)
11 vchavez@kleinlaw.com
KLEIN, DENATALE, GOLDNER, COOPER,
12 **ROSENLIB & KIMBALL, LLP**
10000 Stockdale Highway, Suite 200
Bakersfield, CA 93311
13 Telephone: (661) 395-1000
14 Facsimile: (661) 326-0418

15 Attorney for Defendant, *KW Plastics of California*

- 16
17
18
19 (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the
20 State of California Labor and Workforce Development Agency Online Filing Site.
21 (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California,
22 by e-mail delivery on the parties listed herein at their most recent known email address or e-
mail of record in this action.

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

25 Executed on June 7, 2024, at Los Angeles, California.

26 
27 _____
28 Jorge Grimaldy