

1 D.LAW, INC.
Emil Davtyan (SBN 299363)
2 Emil@d.law
David Yeremian (SBN 226337)
3 d.yeremian@d.law
Natalie Haritounian (SBN 324318)
4 n.haritounian@d.law
Jonas Agle (SBN 352712)
5 j.agle@d.law
450 N. Brand Blvd., Suite 840
6 Glendale, CA 91203
Telephone: (818) 962-6465
7 Fax: (818) 962-6469

8 Attorneys for Plaintiff RODGER LEE CAPPS,
on behalf of himself and others similarly situated
9

MAR 20 2025
Filed _____
STEPHANIE BOHRER, CLERK
By *[Signature]*
DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN JOAQUIN

12 RODGER LEE CAPPS, an individual on
behalf of himself and all others similarly
13 situated,

14 Plaintiff,

15 vs.

16 WEST COAST ENERGY SYSTEMS LLC, a
California Limited Liability Company;
17 ELECTRONIC ENVIRONMENTS
CORPORATION, a Massachusetts
18 Corporation; ELECTRONIC
ENVIRONMENTS CO. LLC, a
19 Massachusetts Limited Liability Company;
GENERAC, a business entity of unknown
20 form; GENERAC POWER SYSTEMS, INC.,
a Wisconsin Corporation; GENERAC
21 HOLDINGS, INC., a Delaware Corporation;
ENERGY SYSTEMS, a business entity of
22 unknown form; and DOES 1 through 50,
inclusive,

23 Defendants.
24

Case No.: STK-CV-UOE-2023-0010362

CLASS ACTION

Assigned for All Purposes To:
Hon. Robert T. Waters

**[PROPOSED] ORDER GRANTING (1)
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF SETTLEMENT;
AND (3) SETTING HEARING FOR FINAL
APPROVAL**

Hearing

Date: 3/20/2025
Time: 9:00 a.m.
Dept: 11B

BY FAX

FEB 19 2025

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RECITALS

On February 19, 2025, Plaintiff RODGER LEE CAPPS (the "Named Plaintiff"), individually and on behalf of the Class, and Defendants West Coast Energy Systems, LLC, Electronic Environments Corporation, Electronic Environments Co. LLC, Generac Power Systems, Inc., and Generac Holdings, Inc., (collectively "Defendants") entered into a class action settlement, the terms and conditions of which are set forth in the parties' Class Action and PAGA Settlement Agreement (hereafter collectively, the "Settlement" or "Settlement Agreement"). Unless otherwise provided in this Order, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement.

The motion of the Named Plaintiff for an order preliminarily approving the settlement of this action, approving the form notice of settlement, and setting a final approval hearing came on for hearing in Department 11B of this Court on MAR 20 2025, 2025.

This Court, having fully considered Plaintiff's Motion, the Memorandum of Points and Authorities in support, the Declaration in support, the Settlement Agreement, the proposed form of Class Notice, and the oral argument presented to the Court, finds that: (1) the proposed settlement appears fair, reasonable and adequate, and that a final hearing should be held after notice to the Class (defined below) of the proposed settlement to determine if the Settlement Agreement and settlement are fair, reasonable, and adequate such that a Final Order and Judgment should be entered in this action based upon the Settlement Agreement and (2) the PAGA Settlement Payment is fair and adequate and the PAGA Settlement Payment should be approved.

THE COURT ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

ORDER PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL

1. The Court finds that certification of the following class, for settlement purposes only, is appropriate:

"all persons employed by Defendants in California and classified as a non-exempt who worked for Defendants at any time between September 29, 2019 to October 10, 2024."

1 2. The Court grants preliminary approval of the terms and conditions contained in the
2 Settlement Agreement. The Court finds that the terms of the Settlement Agreement are within the
3 range of possible approval at the final approval hearing.

4 3. The Court preliminarily finds, for settlement purposes only, that the Class meets
5 (i) the ascertainability and numerosity requirements; (ii) the commonality requirement because, in
6 the absence of class certification and settlement, each individual Class Member would have to
7 litigate core common issues of law and fact, all relating to Defendants' alleged wage-and-hour
8 violations asserted in the action; (iii) the typicality requirement because the Named Plaintiff and the
9 Class Members' claims all arise from the same alleged events and course of conduct, and are based
10 on the same legal theories; and (iv) the adequacy of representation requirement because the Named
11 Plaintiff has the same interests as all members of the Class, and he is represented by experienced
12 and competent counsel.

13 4. The Court further finds, preliminarily and for settlement purposes only, that common
14 issues predominate over individual issues in this litigation and that class treatment is superior to the
15 other means of resolving this dispute. Employing the class device here will not only achieve
16 economies of scale for Class Members with individual claims, but also conserve the resources of
17 the judicial system and preserve public confidence in the integrity of the system by avoiding the
18 waste and delay of repetitive proceedings. In addition, certifying the class will prevent inconsistent
19 adjudications of similar issues and claims.

20 5. For settlement purposes only, the Court finds that the Named Plaintiff, Rodger Lee
21 Capps, is an adequate representative and appoints him as such. The Court further finds that Emil
22 Davtyan, David Yeremian, and Natalie Haritounian of D.Law, Inc., have adequately represented the
23 Named Plaintiff and the Class in this litigation, and the Court appoints them as Class Counsel.

24 6. The Court appoints Apex Class Action, LLC to perform the duties of a Administrator
25 for the purpose of issuing the Class Notice and administering the Settlement.

26 7. The Court recognizes that certification under this Order is for *settlement purposes*
27 *only*, and shall not constitute or be construed as a finding by the Court, or an admission on the part
28 of Defendants, that this action is appropriate for class treatment for litigation purposes. Entry of

1 this Order is without prejudice to the rights of Defendants to oppose class certification in the actions,
2 should the proposed Settlement Agreement not be granted final approval.

3 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

4 8. The Court has reviewed the Settlement Agreement and the proposed Class Notice to
5 the Settlement Agreement. The Court finds, on a preliminary basis, that the Settlement Agreement
6 appears to be within the range of reasonableness of a settlement that could ultimately be given final
7 approval by this Court. It appears to the Court on a preliminary basis that:

8 a. The settlement amount is fair and reasonable to all Class Members when
9 balanced against the probable outcome of further litigation relating to liability and damages issues;

10 b. Extensive and costly investigation and research have been conducted such
11 that counsel for the parties at this time are reasonably able to evaluate their respective positions;

12 c. Settlement at this time will avoid additional substantial costs, such as those
13 that have already been incurred by both parties, as well as avoid the delay and risks that would be
14 presented by the further prosecution of this litigation; and

15 d. The proposed settlement has been reached as the result of intensive, serious,
16 and non-collusive arm's-length negotiations.

17 9. The Court further approves the following representative group of employees as
18 governed by the Settlement Agreement with respect to the PAGA Claim:

19 "a person employed by Defendants in California and classified as a non-exempt who
20 worked for Defendants at any time between September 29, 2022 to October 10, 2024."

21 10. The Court grants approval of the PAGA Settlement Payment pursuant to the terms
22 and conditions contained in the Settlement Agreement. The Court finds that the terms of the PAGA
23 settlement are fair and reasonable and approves the PAGA settlement pursuant to Labor Code
24 § 2699(1)(2).

25 11. Because a PAGA action is not a class action, Class Members may not opt out of, or
26 object to, the PAGA Settlement Payment.

27 12. If the Court does not grant final approval of the Settlement Agreement, approval of
28 the PAGA settlement will be vacated.

1 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

2 **AND TIMELINE FOR SENDING CLASS NOTICE**

3 13. This Court finds that the Class Notice fairly and adequately advises the potential
4 Class Members of the terms of the Settlement and the process for the Class Members to obtain the
5 benefits available under the Settlement Agreement, as well as the right of Class Members to opt out
6 of the class, to file documentation in opposition to the proposed settlement, and to appear at the
7 settlement hearing to be conducted on the date set by the Court. The Court further finds that the
8 Class Notice and proposed distribution of such Class Notice by first-class mail to each identified
9 Class Member at their last known address comports with all constitutional requirements, including
10 those of due process under the United States and California constitutions, and meets the
11 requirements of Code of Civil Procedure § 382 and California Rules of Court rule 3.766.
12 Accordingly, good cause appearing therefore, the Court hereby approves the proposed Class Notice.

13 14. The Administrator shall, as soon as practicable, but no later than _____, 2025
14 cause the Class Notice to be mailed by first class mail to all known members of the Class certified
15 by this Court in this action to the most recent address in Defendants' business records for each
16 known member of the Class. The mailing of the Class Notices directed in this Order constitutes the
17 best notice practicable under the circumstances and sufficient notice to all members of the Class.

18 15. The costs of settlement administration, including the cost of printing and mailing the
19 Class Notices shall be paid from the Settlement Amount. Such costs shall be withheld from the
20 Settlement Amount by the Administrator pursuant to the terms of the Settlement Agreement.

21 16. Each member of the Class who wishes to be excluded from the Class must submit a
22 request to be excluded from the Settlement by the deadline set forth in the Class Notice. Any Class
23 Member who does not submit a timely request to be excluded from the Settlement consistent with
24 the terms of the Settlement Agreement shall be bound by the terms of the Settlement Agreement,
25 even if such Class Member has previously initiated or subsequently initiates individual litigation
26 against Defendants or other proceedings encompassed by the Settled Claims defined in the
27 Settlement Agreement.

28 **OBJECTIONS TO SETTLEMENT**

1 17. Any member of the Class who has not timely elected to be excluded from the Class,
2 and who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement
3 or the proposed settlement, or to the award of Class Counsel Fees and Litigation Expenses Payment,
4 shall provide to the Administrator a written statement of the objection, as well as the specific
5 reasons, if any, for each objection. The Administrator will promptly transmit any objections it
6 receives to Class Counsel and Defendants' counsel.

7 18. All written objections must be signed by the Class Member or the Class Member's
8 representative and must include the information specified in the Class Notice.

9 19. A Class Member may appear either in person or through personal counsel at the Final
10 Hearing to object to the Settlement. If represented by personal counsel, the counsel will be hired at
11 the Class Member's expense.

12 20. Class Counsel and Defendants' counsel shall promptly furnish each other with copies
13 of any and all objections or written requests for exclusion that come into their possession.

14 **FINAL APPROVAL FAIRNESS HEARING**

15 21. The Court grants Plaintiff's motion to set a settlement hearing for final approval of
16 the Settlement Agreement on September 10, 2025 at 9:00 ~~a.m.~~/p.m. in Department 11B of
17 this Court ("Final Hearing"), as set forth in the Class Notice, to determine whether the proposed
18 settlement of this action is fair, reasonable and adequate and should be finally approved. The Court
19 will also consider at the Final Hearing whether applications for Plaintiff's Class Counsel Fees and
20 Litigation Expenses Payment, and service award to the Named Plaintiff should be granted and, if
21 so, in what amounts.

22 22. Members of the Class who have not timely elected to be excluded from the Class and
23 who object to the proposed Settlement may appear and present such objections at the Settlement
24 Hearing in person or by counsel, provided that the objecting Class Member complied with the
25 requirements to object to the Settlement. No person shall be heard, and no briefs or papers shall be
26 received or considered, unless the requirements to object to the Settlement have been satisfied,
27 except as this Court may permit for good cause shown.

28 23. Class Counsel shall file Plaintiff's memorandum of points and authorities in support

1 of the final approval of the Settlement Agreement and his request for approval of the Class Counsel
2 Fees and Litigation Expenses Payment, and service award no later than 16 court days prior to the
3 Final Hearing. After the Final Hearing, the Court may enter a Final Order and Final Judgment in
4 accordance with the Settlement Agreement that will adjudicate the rights of all Class Members.

5 24. All discovery and other pretrial proceedings in this action are stayed and suspended
6 until further order of this Court, except such actions as may be necessary to implement the
7 Settlement Agreement and this Order.

8 25. If, for any reason, the Court does not grant final approval of the Settlement, all
9 evidence and proceedings held in connection therewith shall be without prejudice to the status quo
10 ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

11 **IT IS SO ORDERED.**

12
13 Dated: March 20, 2025


14 _____
15 JUDGE OF THE SUPERIOR COURT

16 **ROBERT T. WATERS**

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