

GRAHAM HOLLIS APC
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Superior Court of California,
County of San Diego
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FILED
Clerk of the Superior Court
MAR 10 2020
By: L. Ujie, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MICHAEL BERGMAN, on behalf of all other similarly situated and/or aggrieved employees of DEFENDANTS in the State of California,

Plaintiff,

v.

BJS&T ENTERPRISES, INC., d.b.a. SAN DIEGO POWDER & PROTECTIVE COATINGS; and DOES 1 THROUGH 50, Inclusive,

Defendants.

Case No.: 37-2018-00056542-CU-OE-CTL

[IMAGED FILE]

[PROPOSED] ORDER GRANTING PLAINTIFF MICHAEL BERGMAN'S UNOPPOSED MOTION FOR: (1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; (2) PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS; (3) APPROVAL OF CLASS NOTICE AND NOTICE PLAN; (4) APPOINTMENT OF CLASS COUNSEL AND CLASS REPRESENTATIVE; (5) APPOINTMENT OF SETTLEMENT ADMINISTRATOR; AND (6) SETTING A FINAL APPROVAL HEARING

Date: February 21, 2020
Time: 8:30 a.m.
Judge: Hon. Ronald F. Frazier
Dept.: C-65

Complaint Filed: November 7, 2018
Trial Date: None set

Plaintiff Michael Bergman's Unopposed Motion for Preliminary Approval of Class Action Settlement with BJS&T Enterprises, Inc., d.b.a. San Diego Powder & Protective Coatings ("Defendant" or "SDP") came before this Court on February 21, 2020. The Court, having considered the proposed Stipulation and Agreement for Class Action Settlement and Release of Claims (the "Settlement Agreement"), Plaintiff Michael Bergman's Unopposed Motion for Preliminary Approval, and all papers

1 filed in support, **HEREBY ORDERS THE FOLLOWING:**

2 1. The Court grants preliminary approval of the Settlement and preliminarily finds that: (1)
3 the Settlement is fair and reasonable to the Class when balanced against the possible risks of further
4 litigation, including issues relating to class certification, liability, calculating damages, and potential
5 appeals; (2) significant investigation, research, and litigation have been conducted, such that the Parties
6 are able to fairly evaluate their respective positions; (3) settlement at this time will avoid the substantial
7 cost, delay and risk presented by further litigation of the action; and (4) the Settlement was reached after
8 serious, informed, and non-collusive negotiations, which were conducted at arms' length by experienced
9 counsel.

10 2. This Order incorporates by reference all defined terms set forth in the Settlement
11 Agreement, which is attached as **Exhibit 1** to the Declaration of Graham S.P. Hollis in Support of Plaintiff
12 Michael Bergman Unopposed Motion for Preliminary Approval of Class Action Settlement ("Hollis
13 Decl."), filed on January 29, 2020.

14 3. The Court finds that the proposed Class meets the requirements of numerosity,
15 commonality, and typicality to justify certification, and that there is adequate and fair representation.

16 4. The Court grants provisional certification of the Class and Subclass, which are defined in
17 the Settlement Agreement, as follows:

18 a. The "Class" is defined as: "[A]ll former and current non-exempt employees employed
19 by SDP anywhere in the State of California during the Class Period. ("Non-Exempt
20 Class")."

21 b. The "Waiting Time Penalties Subclass" is defined as: "All members of the Non-
22 Exempt Class, whose employment with SDP ended at any time from November 7, 2015
23 through the date the Court grants Preliminary Approval of the Settlement."

24 5. The Class includes all Class Members other than those who exclude themselves by timely
25 submitting a valid Request for Exclusion in accordance with the requirements set forth in the Class Notice
26 and Settlement Agreement.

27 6. Class Members who wish to request exclusion from or object to the Settlement must follow
28 the procedures set forth in the Settlement Agreement and Notice of Proposed Class Action Settlement

1 (“Class Notice”).

2 7. The Court approves the appointment of Plaintiff Michael Bergman as Class Representative.

3 8. The Court approves the appointment of Plaintiff’s Counsel: Graham S.P. Hollis and
4 Vilmarie Cordero, of GRAHAMHOLLIS APC as Class Counsel.

5 9. The Court preliminarily confirms that the Notice of Settlement served by Plaintiff on the
6 California Labor and Workforce Development Agency (“LWDA”) satisfies the requirements of the
7 Private Attorneys General Act (“PAGA”).

8 10. The Court approves the form and content of the Class Notice, in substantially the form
9 attached to the Settlement Agreement as Exhibit A, and finds that the proposed method of disseminating
10 the Class Notice meets all the due process requirements; provides the best notice practicable under the
11 circumstances; constitutes notice that is reasonably calculated, under the circumstances, to apprise Class
12 Members of the pendency of the Action and their right to exclude themselves from or object to the
13 proposed Settlement and to appear at the Final Approval Hearing; is reasonable and constitutes due,
14 adequate, and sufficient notice to all Class Members; and meets all applicable requirements under
15 California law, due process, and any other applicable rules or law.

16 11. The Court preliminarily approves the definition and disposition of the Gross Fund Value
17 of \$200,000, which is inclusive of (1) all Individual Settlement Payments to participating Class Members;
18 (2) the Class Representative Enhancement Award of \$7,500 to Plaintiff Michael Bergman; (3) Class
19 Counsel’s fees not to exceed \$66,666.67, and reasonable attorneys’ costs not to exceed \$7,500; (4) all
20 Settlement Administration Costs, in an amount not to exceed \$7,000; and (5) the PAGA Payment of
21 \$1,875 to the LWDA. The Gross Fund Value will also include SDP’s share of any state and federal payroll
22 taxes and withholdings, such as FICA, FUTA, IU, ETT, and SDI, on Individual Settlement Payments
23 made pursuant to the Settlement Agreement.

24 12. The Court approves the retention of ILYM Group, Inc. as the Settlement Administrator, to
25 be paid out of the Gross Fund Value, and hereby directs ILYM Group, Inc. to provide the approved Class
26 Notice to Class Members and administer the Settlement in accordance with the procedures set forth in the
27 Settlement Agreement and Implementation Schedule set forth below.

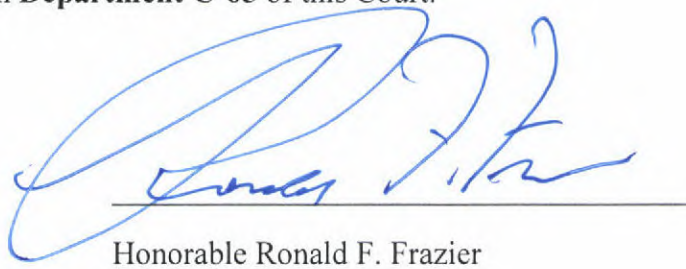
28 13. In the event the Settlement does not become effective in accordance with the terms of the

1 Settlement Agreement, or the Settlement is not finally approved by this Court, is not approved in whole
2 or in part by the Court or any appellate court and/or other court of review, or is terminated, cancelled or
3 fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated,
4 the Parties shall revert to their respective positions as of the commencement of the litigation, and the
5 Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as
6 an admission or as evidence for any purpose, including but not limited to an admission by any Party of
7 liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a
8 representative action.

9 The Court hereby sets a hearing date for Plaintiff Michael Bergman's Motion for Final Approval
10 of Class Action Settlement and Award of Attorney's Fees, Costs, and Class Representative Service Award
11 on: 10/30/20 at 8:30 a.m. in **Department C-65** of this Court.

12 **IT IS SO ORDERED.**

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14 Dated: 3/10/20



Honorable Ronald F. Frazier
Judge of the Superior Court

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