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14 Attorneys for Plaintiffs James Van Den Hende, Fred Schroeder and the Putative Class

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF SAN BERNARDINO

17 JAMES VAN DEN HENDE, an Individual, for)
18 himself and those similarly situated,)

19 Plaintiffs,)

20 v.)

21 DPI SPECIALTY FOODS, INC.)
22 a Delaware Corporation doing)
23 business in California;)
24 DPI SPECIALTY FOODS WEST, INC.,)
25 a Delaware Corporation doing)
26 business in California; and)
27 DOES 1 through 100, Inclusive,)

28 Defendants.)

CASE NO. CIVRS1304516

[Assigned for all purposes to the Honorable
Gilbert G. Ochoa, Dept. S36J]

Action Filed: June 28, 2013
Trial Date: July 27, 2015

CLASS ACTION

**NOTICE OF RULING ON MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND FOR
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES**

Hearing Date: February 9, 2015
Time: 8:30 a.m.
Department: S36

29 **TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

30 PLEASE TAKE NOTICE Plaintiffs' Motion for Preliminary Approval of Class Action

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 18 2015

BY Josephine Contreras
JOSEPHINE CONTRERAS, DEPUTY

1 Settlement and for Class Certification for Settlement Purposes came on for hearing in department S36
2 of the above-captioned Court on February 9, 2015. Attorney Michael A. Strauss of Palay Law Firm,
3 APC appeared for plaintiffs and the putative class; attorney Dawn Collins of Ogletree, Deakins, Nash,
4 Smoak & Stewart, PC appeared on behalf of the defendants. At the hearing, the Court GRANTED
5 Plaintiffs' motion and entered the Order attached hereto as Exhibit A.

6 Dated: February 16, 2015

PALAY LAW FIRM
A Professional Corporation



By: _____
Michael A. Strauss
Attorneys for Plaintiff

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EXHIBIT A

COPY

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF SAN BERNARDINO

17 JAMES VAN DEN HENDE, an Individual, for
18 himself and those similarly situated,

19 Plaintiffs,

20 v.

21 DPI SPECIALTY FOODS, INC.
22 a Delaware Corporation doing
23 business in California;
24 DPI SPECIALTY FOODS WEST, INC.,
25 a Delaware Corporation doing
26 business in California; and
27 DOES 1 through 100, Inclusive,

28 Defendants.

CASE NO. CIVRS1304516

[Assigned for all purposes to the Honorable
Gilbert G. Ochoa, Dept. S36J]

Action Filed: June 28, 2013

Trial Date: July 27, 2015

CLASS ACTION

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AND FOR CLASS
CERTIFICATION FOR SETTLEMENT
PURPOSES

Hearing Date: February 9, 2015

Time: 8:30 a.m.

Department: S36J

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 09 2015

BY Kimberly Poland
KIMBERLY POLAND, DEPUTY

BY FAX

WHEREAS, the Court has been advised that the parties to this action, *Van Den Hende v. DPI Specialty Foods, Inc.*, Case No. CIVRS1304516 in this Court, have agreed, subject to Court approval following a hearing, to settle this putative class action upon the terms and conditions set forth in the

1 Joint Stipulation of Settlement and Release¹ (the "Settlement Agreement");

2 WHEREAS, Plaintiffs James Van Den Hende and Fred Schroeder approve the Settlement
3 Agreement;

4 NOW, THEREFORE, this matter having come before this Court, with Palay Law Firm, APC
5 appearing for Plaintiffs Van Den Hende and Schroeder and Ogletree, Deakins, Nash, Smoak &
6 Stewart, P.C. appearing for Defendants DPI Specialty Foods, Inc. and DPI Specialty Foods West, Inc.
7 ("Defendants"), having considered all briefs, evidence, and argument regarding Plaintiff's Motion For
8 Preliminary Approval Of Class Action Settlement And For Class Certification For Settlement
9 Purposes (the "Motion"), and for good cause appearing therefor,

10 **IT IS HEREBY ORDERED** that:

11 Plaintiff's Motion is **GRANTED** as set forth herein.

12 **IT IS FURTHER ORDERED** that:

13 Upon preliminary examination, that the settlement set forth therein is within the range of
14 reasonableness, and that a hearing should and will be held after notice to the Settlement Class to
15 confirm that the settlement is fair, adequate, and reasonable, and to determine whether a Judgment
16 should be entered in this action based thereon.

17 **IT IS HEREBY ORDERED** that:

18 1. This Order Granting Preliminary Approval of Class Action Settlement and Class
19 Certification for Settlement Purposes ("Preliminary Approval Order"), hereby incorporates by
20 reference the definitions in the Settlement Agreement, and all terms used herein shall have the same
21 meanings as set forth in that Settlement Agreement.

22 2. The Court grants preliminary approval of the settlement. The following class is
23 conditionally certified for the purposes of this settlement: "All employees of DPI Specialty Foods, Inc.
24 and/or DPI Specialty Foods West, Inc. who worked in the position of Sales Representative in
25 California between June 28, 2009 to the Preliminary Approval Date" (the "Class").

26 3. This Court preliminarily approves the Settlement Agreement as set forth therein and
27

28 ¹ A copy of the Settlement Agreement is attached as Exhibit 1 to Plaintiff's Motion For Preliminary
Approval Of Class Action Settlement And For Class Certification For Settlement Purposes.

1 finds that the Settlement is within the range of reasonableness as to the Class and Defendants, was
2 reached after substantial investigation and discovery, and is the product of good faith, arm's-length
3 negotiations between the parties. This Court finds that the proposed release is appropriately tailored to
4 the claims at issue and that the allocation of payment among wages, penalties, and interest for tax
5 purposes is reasonable.

6 4. This Court finds that Michael A. Strauss of Palay Law Firm, APC and Anthony R.
7 Strauss and Aris E. Karakalos of Strauss Law Group, APC are sufficiently experienced and proficient
8 in class action proceedings that they may act as Class Counsel and further finds that Plaintiffs James
9 Van Den Hende and Fred Schroeder may act as Class Representatives for settlement purposes only.
10 The Court further authorizes the retention of CPT Group, Inc. as Claims Administrator.

11 5. The Court hereby conditionally certifies the proposed Class and conditionally finds
12 that, solely for the purposes of approving this settlement and for no other purpose and with no other
13 effect on this litigation, the proposed Class meets the requirements for certification under section 382
14 of the California Code of Civil Procedure, including that: (a) the proposed Class is ascertainable and
15 so numerous that joinder of all members of each subclass is impracticable; (b) there are predominant
16 questions of law or fact common to the Class, and there is a well defined community of interest
17 amongst the members of the Class with respect to the subject matter of the litigation; (c) the claims of
18 the Representative Plaintiffs are typical of the claims of the members of the Class; (d) Representative
19 Plaintiffs James Van Den Hende and Fred Schroeder will fairly and adequately protect the interests of
20 the members of the Class; (e) a class action is superior to other available methods for an efficient
21 method of adjudication of this controversy; and (f) Class Counsel is qualified to act as counsel for the
22 Representative Plaintiffs in their individual and representative capacities.

23 6. The Court approves the Notice of Class Action Settlement, attached hereto as Exhibit 1
24 (the "Notice"). The Notice provides information on the meaning and nature of the Class; the terms
25 and provisions of the Settlement Agreement; an estimate of each individual settlement amount; the
26 manner in which payments to Class members will be calculated; the application of Plaintiffs' counsel
27 for reimbursement of costs and attorney's fees; the Representative Plaintiffs' request for incentive
28 awards; the date, time, and place of the final approval/final fairness hearing; and the procedures and

1 deadlines for requesting exclusion from the Class and/or objecting to the settlement. The Notice fully
2 complies with the requirements of California law and due process, constitutes the best notice
3 practicable under the circumstances, and is due and sufficient notice to all persons entitled to the
4 Notice of the Settlement of the instant action.

5 7. The Notice shall be provided to the members of the Class in the following manner:

6 a. Within fourteen (14) calendar days after the Court issues this Preliminary Approval
7 Order, Defendants shall provide to the Claims Administrator in electronic form, a list of each Eligible
8 Person², including each Eligible Person's name, employment status (current or former employee), date
9 of separation (if applicable), last known address (identified from Defendants' payroll records), social
10 security number, and number of Estimated Workweeks ("Database"). The Database shall be based on
11 Defendants' payroll, personnel, and/or other business records and be provided in a format acceptable
12 to the Claims Administrator. Defendants will consult with the Claims Administrator prior to the
13 production date to ensure that the format will be acceptable to the Claims Administrator. The Claims
14 Administrator shall maintain the Database, and all data contained within the Database, as private and
15 confidential and shall not disclose such data to any persons or entities, except that relevant information
16 may be provided to Class Counsel to the extent necessary to address a disputed claim or to respond to
17 a specific inquiry from an Eligible Person. This data will be supplied solely for purposes of the
18 administration of the settlement and hence cannot be used by the Claims Administrator or Class
19 Counsel for any purpose other than to administer the settlement. The information in the Database will
20 not be used to solicit Eligible Persons or Qualified Claimants to file any claim, charge or complaint of
21 any kind whatsoever against Defendants, or for any other purpose other than to administer the
22 settlement as provided herein. Upon receipt of the Database, the Claims Administrator shall check the
23 names of former employee Eligible Persons with the U.S. Postal Service National Change of Address
24 Database and update any addresses with any new information found regarding the location of those
25 Eligible Persons. The Claims Administrator shall update the Database with all new contact
26 information found pursuant to its obligations in this paragraph, or based on information provided by
27

28 ² Pursuant to the Settlement Agreement, "Eligible Persons" means all persons within the definition of
the Class as of the date of the mailing of the Notice of Settlement

1 Eligible Persons during the Claims process.

2 b. Within seven (7) calendar days of receiving the Database from Defendants, the
3 Claims Administrator shall send via first class mail the Notice of Settlement to the Eligible Persons.

4 c. If any Notice of Settlement is returned to the Claims Administrator as
5 undeliverable, the Claims Administrator shall run a skip-trace using that Eligible Person's social
6 security number in an effort to attempt to ascertain the current address of the Eligible Person. If such
7 address is ascertained, the Claims Administrator shall re-mail the Notice of Settlement within five (5)
8 calendar days. If alternative addresses are obtained for an Eligible Person, the Claims Administrator
9 shall send the Notice of Settlement to up to three alternative addresses.

10 d. In order to claim his/her share of the Settlement Fund, an Eligible Person need not
11 submit to the Claims Administrator an executed claim form.

12 e. Eligible Persons, except for Plaintiffs (who may not opt-out of the settlement), shall
13 have forty-five (45) calendar days from the original mailing date of the Notice of Settlement within
14 which to opt out of the settlement. Eligible Persons who wish to exercise this option must timely
15 submit a letter, with the case information, their basic contact information (name, address, last four
16 numbers of their social security numbers) and statement to the effect that they do not wish to
17 participate in the settlement, are asking to exclude themselves and understand that as a result they will
18 not receive his/her share of the Settlement Fund, but will preserve the right to pursue an individual
19 claim ("Opt-Out Letter"). The Opt-Out Letter must be postmarked on or before forty-five (45)
20 calendar days from the date of mailing the Notice of Settlement. Eligible Persons who do not timely
21 submit an Opt-Out Letter shall be part of the Settlement Class and bound by the Settlement
22 Agreement. Eligible Persons who timely submit an Opt-Out Letter shall have no further role in the
23 Action, and for all purposes they shall be regarded as if they never were a party to this Action or an
24 Eligible Person, and thus they shall not be entitled to any payment as a result of this settlement and
25 shall not be entitled to or permitted to assert an objection to the settlement. The Notice of Settlement
26 shall advise Eligible Persons of their ability to opt out of the Settlement Agreement and of the
27 consequences thereof. Neither the Parties nor any of their counsel shall solicit, encourage or advise
28 any Eligible Persons to submit an Opt-Out Letter.

1 8. At least five (5) court days prior to the Final Approval hearing, Plaintiffs shall file a
2 motion for final approval of the settlement and for judgment, any request for an attorney's fees award
3 and/or reimbursement of litigation costs, and Representative Plaintiffs' incentive award, as well as a
4 declaration from the Claims Administrator showing its efforts to mail the Notice and process requests
5 for exclusion and the results thereof.

6 9. Defendants deny that they have engaged in any unlawful activity, have failed to comply
7 with the law in any respect, or have any liability to anyone under the claims asserted in this litigation.
8 Furthermore, Plaintiffs do not concede any of Defendants' affirmative defenses nor assent to any of
9 their denials. The parties entered into the Settlement Agreement solely for the purpose of reaching a
10 compromise on highly disputed claims and nothing therein is an admission of liability or wrongdoing
11 by Defendants. Neither the settlement nor any document prepared in connection with the settlement or
12 Settlement Agreement may be admitted in any proceeding as an admission by the parties, or any
13 person within the definition of the Class.

14 10. The final approval hearing shall be held at 8:30 a.m. on May 13, 2015 [OR ____
15 a.m./p.m. on _____, 2015] in Department S36J of this Court, to determine whether the
16 proposed Settlement Agreement is fair, adequate, reasonable, and should be approved. Plaintiffs'
17 papers in support of the Settlement Agreement, and any application for award of attorney's fees and
18 costs to Class Counsel, incentive award to the Representative Plaintiffs, and claims administration
19 costs to the Claims Administrator, shall be filed with the Court within the timeframe set forth in
20 paragraph 8, *supra*. The hearing date may be continued without further notice to the class.

21 11. Should the proposed Settlement Agreement be approved, following the final approval
22 hearing, this Court shall enter judgment in the above-captioned matter in accordance with the
23 Settlement Agreement that will adjudicate the rights of all Class members who do not opt out,
24 including the named Plaintiffs.

25 12. The Court will consider whether to approve Class Counsel's request for attorney's fees
26 and costs, incentive award to the Class Representatives, and payment of Claims Administration
27 expenses from the maximum settlement amount at final approval. Admissible evidence to support the
28 requested amounts for fees and costs, incentive award, and costs of administration should be provided

1 prior to the final approval hearing. The Court does not express any opinion as to those sums at this
2 time.

3 13. The Court designates the California Bar Foundation as the *cy pres* beneficiary pursuant
4 to Code of Civil Procedure section 384(b), which allows the distribution of unpaid residuals to
5 "nonprofit organizations providing civil legal services to the indigent."

6 14. Unless otherwise modified by this Court, the dates for performance are as follows:
7

<u>DATE/TRIGGERING EVENT</u>	<u>EVENT</u>
Preliminary Approval Order date: February 9, 2015 [OR _____, 2013]	Court orders preliminary approval of Settlement and conditional certification of class.
Within 14 calendar days of Preliminary Approval Order date.	Deadline for Defendants to provide the Class Member "Database" to the Claims Administrator. (Settlement at ¶ 7.2.1.)
Within 7 calendar days of receiving the Database from Defendants.	Deadline for the Claims Administrator to send via first class mail the Settlement Documents to the Eligible Persons. (Settlement at ¶ 7.2.2.)
45 calendar days of original mailing of the Settlement Documents.	Deadline for Eligible Persons (except for Plaintiffs, who may not opt-out) to opt-out of the Settlement by postmarking and mailing an Opt- Out Letter to the Settlement Administrator. (Settlement at ¶ 7.2.5.)
45 calendar days of original mailing of the Settlement Documents.	Deadline for Class Members to file an objection to the Settlement with the Court. (Settlement at ¶ 7.2.8.)

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20 calendar days prior to the Final Approval Hearing.	Deadline for Claims Administrator to provide to Class Counsel and Defendants' Counsel a written verification/declaration signed under penalty of perjury that it mailed the Settlement Documents to the Eligible Persons. (Settlement at ¶ 7.2.11.)
20 calendar days prior to the Final Approval Hearing.	Deadline for Claims Administrator to file with the Court all objections it has received from the Eligible Persons. (Settlement at ¶ 7.2.8.)
5 court days before the Final Approval Hearing.	Deadline for Plaintiff to file a motion for approval and judgment, any request for an attorney's fees award and/or reimbursement of litigation costs, and Representative Plaintiffs' service payments, as well as a declaration from the Claims Administrator showing its efforts to mail the Notice and process requests for exclusion and the results thereof. (Settlement at ¶¶ 7.3.1, 7.3.2.)
Final Approval Hearing date: May 13, 2015 [OR _____] at <u>8:30</u> am/pm.	FINAL APPROVAL HEARING

IT IS SO ORDERED.

DATED: 2-9, 2015

GILBERT G. OCHOA

HONORABLE GILBERT G. OCHOA
Judge of the Superior Court

1999999.1

1 **PROOF OF SERVICE**

2 I, Jacqueline Villarreal, do declare as follows:

3 I am a resident of the State of California, over the age of eighteen years, and not a party
4 to the within action. My business address is PALAY LAW FIRM, 121 N. Fir Street, Suite F,
5 Ventura, California 93001. On February /7, 2015, I served the within documents:

6
7 **1. NOTICE OF RULING ON MOTION FOR PRELIMINARY APPROVAL OF
8 CLASS ACTION SETTLEMENT AND FOR CLASS CERTIFICATION FOR
9 SETTLEMENT PURPOSES;**

10 X by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in the United States mail at Ventura, California addressed as set forth
12 below.

13 Dawn T. Collins
14 Vicky H. Lin
15 Ogletree Deakins
16 400 S. Hope Street, Suite 1200
17 Los Angeles, CA 90071
18 Telephone: (213) 239-9800
19 Facsimile: (213) 239-9045
20 Email: dawn.collins@ogletreedeakins.com
21 *Counsel for Defendants DPI Specialty Foods, Inc.*
22 *& DPI Specialty Foods West, Inc.*

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

25 Executed on February /7, 2015, at Ventura, California.

26 *Jacqueline Villarreal*
27 _____
28 Jacqueline Villarreal