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**FILED**  
ALAMEDA COUNTY

DEC 15 2017

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

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13 **SUPERIOR COURT OF CALIFORNIA**  
14 **COUNTY OF ALAMEDA – UNLIMITED CIVIL CASE**

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16 JOSHUA AUSTIN, ROBERTO MIRELES,  
17 III, and ALEX BROWN, on behalf of  
themselves and all others similarly situated,

18 Plaintiffs,

19 vs.

20 COSCO FIRE PROTECTION, INC.,

21 Defendants.  
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Case No.: RG16831960

**~~PROPOSED~~ ORDER OF FINAL  
APPROVAL, APPROVING ATTORNEYS'  
FEES AND COSTS, AND ENTRY OF  
JUDGMENT**

Reservation Nos. R1877148, R1906795  
Judge: Honorable Winifred Smith  
Date and Time: Dec. 15, 2017 at 10:00 AM  
Department 21

24  
25 **TO EACH PARTY AND THE COUNSEL OF RECORD FOR EACH PARTY:**

26 Before the Court are Plaintiffs' (1) Motion for Final Approval of Class Action Settlement and  
27 (2) Motion for Attorneys' Fees and Costs ("Motions"). The Court granted preliminary approval of the  
28

1 proposed Settlement on July 28, 2017, and approved the joint stipulation submitted by the parties to  
2 substitute Rust Consulting, Inc. as the Claims Administrator because they were less expensive on  
3 September 12, 2017. Due and adequate notice having been given to Defendant and the Class, and the  
4 Court having considered the Settlement Agreement, the instant Motions, all papers filed, and  
5 proceedings herein, and having reviewed the record in this litigation, and good cause appearing, the  
6 Court here by GRANTS final approval of the Settlement and GRANTS Plaintiffs' motion for approval  
7 of fees and costs.

8 1. Except as otherwise specified herein, for the purposes of this Order and Judgment, the Court  
9 adopts and incorporates by reference all defined terms set forth in the Settlement Agreement and Motion  
10 for Preliminary Approval.

11 2. The Court finds that this Settlement satisfies the requirements for a class action settlement  
12 under Code of Civil Procedure section 382 and further finds that the Settlement Class has at all times  
13 been adequately represented by the three Named Plaintiffs and Class Counsel.

14 3. The Claims Administrator, Rust Consulting, provided notice approved by the Court by First  
15 Class mail to the last-known address of each of the 66 individuals identified as Class Members, after  
16 first processing such addresses through the U.S. Postal Service change-of-address database, as stated in  
17 the declaration of Abigail Schwartz for Rust. In addition, follow up efforts were made to send the Notice  
18 to those individuals whose original notices were returned as undeliverable. Efforts were also made to  
19 contact individuals by telephone and email. The Notice adequately described all of the relevant and  
20 necessary parts of the proposed Settlement Agreement, the request for enhancement payments to the  
21 Class Representatives, and Class Counsel's request for an award of attorneys' fees and costs.

22 4. The Court finds that the Notice given to the Settlement Class fully met the requirements of  
23 California law and due process under the United States Constitution. Based on evidence and other  
24 material submitted in conjunction with the Motion for Final Approval, the notice to the class was  
25 adequate.

26 5. The Court finds that the Settlement, as set forth in the Settlement Agreement executed by the  
27 Parties, is fair, reasonable, and adequate. The Court finds that the uncertainty and delay of further

1 litigation support the reasonableness and adequacy of the \$425,000 Settlement Fund established  
2 pursuant to the Settlement Agreement.


3 6. Out of the identified Settlement Class Members, none has objected to any aspect of the  
4 proposed Settlement, and no Class Members have opted out of the proposed Settlement. The reaction  
5 of the Settlement Class to the proposed settlement strongly supports the conclusion that the proposed  
6 Settlement is fair, reasonable, and adequate.

7 7. The Settlement is HEREBY APPROVED in its entirety and the releases encompassed herein  
8 are effectuated.

9 8. The Settlement Fund shall be disbursed in accordance with the Settlement Agreement and as  
10 detailed in the Motion for Preliminary Approval of Class Action Settlement, granted on July 28, 2017,  
11 the Stipulation to Substitute the Claims Administrator, granted on September 12, 2017, and the Motion  
12 for Final Approval filed on November 6, 2017, and the Unopposed Motion for Approval of Attorneys'  
13 Fees, Costs, and Enhancements to Class Representatives filed on November 6, 2017.

14 9. Plaintiffs Joshua Austin and Roberto Mireles are hereby awarded \$5,000 each, and Plaintiff  
15 Alex Brown is awarded \$1,000, for their time and effort in pursuing this litigation, their broader releases  
16 of claims, and the risk they undertook in stepping forward to represent the class. *Munoz v. BCI Coca-*  
17 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 412, *rehearing denied* (Aug. 2, 2010),  
18 *review denied* (Sept. 29, 2010).

19 10. Plaintiffs' application for Attorneys' fees in the amount of \$141,666.67, litigation costs in  
20 the amount of \$12,500, and \$8,500 for administration costs are hereby granted in accordance with *City*  
21 *& County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111 and *Quinn v. State* (1975) 15  
22 Cal.3d 162, 168. Specifically, I find that Plaintiffs' counsel's claimed lodestar rates (\$675/hour for  
23 Bryan Schwartz and various rates for others) and hours worked (hundreds of hours) are reasonable and  
24 that they result in a higher number than the one-third of the common fund sought and awarded. *See*  
25 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n. 11 ("Empirical studies show that, regardless  
26 whether the percentage method or the lodestar method is used, fee awards in class actions average  
27 around one-third of the recovery.").

1 11. In accordance with Department 21's Procedural Guidelines for Final Approval of Class  
2 Action Settlements, a portion of the attorneys' fees award shall be held in an interest-bearing account,  
3 maintained either by the claims administrator or class counsel, pending the submission and approval of  
4 a final compliance status report after completion of the distribution process. The Court finds that an  
5 attorneys' fees holdback amount of \$10,000 is appropriate in this case. The Court sets a final compliance  
6 hearing for February 2<sup>2</sup>, 2018, at 9:00 a.m. in Department 21. 

7 12. The Court approves the *cy pres* recipient identified in the Settlement: Legal Aid at Work, to  
8 receive 50% of any remainder based upon uncashed settlement checks as called for in the Settlement,  
9 because this recipient is useful in fulfilling the underlying purpose of the lawsuit to vindicate low-wage  
10 workers' wage claims. *In re Microsoft I-V Cases* (2008) 135 Cal. App. 4th 706, 722. Based on the recent  
11 amendment to C.C. P. §384, the remaining 50% of any remainder based upon uncashed settlement  
12 checks shall be distributed as follows:

13 (A) Twenty-five percent (25%) to the State Treasury for deposit in the Trial Court Improvement  
14 and Modernization Fund, established in Section 77209 of the Government Code, and subject to  
15 appropriation in the annual Budget Act for the Judicial Council to provide grants to trial courts for new  
16 or expanded collaborative courts or grants for Sargent Shriver Civil Counsel.

17 (B) Twenty-five percent (25%) to the State Treasury for deposit into the Equal Access Fund of  
18 the Judicial Branch, to be distributed in accordance with Sections 6216 to 6223, inclusive, of the  
19 Business and Professions Code, except that administrative costs shall not be paid to the State Bar or the  
20 Judicial Council from this sum.

21 13. The Court finds and determines that payment to the California Labor and Workforce  
22 Development Agency of \$3,187.50 as its share of the settlement of civil penalties under the Private  
23 Attorneys General Act, Labor Code §2698, *et seq.*, in this case is fair, reasonable, and appropriate. The  
24 Court hereby gives final approval to and orders that the payment of that amount be paid out of the  
25 Settlement Fund.

26 16. JUDGMENT IS HEREBY ENTERED, approving the terms of the Settlement.

1 17. In accordance with the California Rule of Court 3.769(h), the Court retains exclusive and  
2 continuing jurisdiction over the litigation, the Plaintiffs, the Class Members and Defendant for the  
3 purposes of supervising the implementation, enforcement, construction, administration and  
4 interpretation of the Settlement Agreement.

5 IT IS SO ORDERED.

6 Dated: DEC 15 2017



Honorable Winifred Y. Smith  
JUDGE OF THE SUPERIOR COURT

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