

JUL 06 2017

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By *RJC*, Deputy
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Attorneys for PLAINTIFFS
and PROPOSED CLASS

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
16 **UNLIMITED CIVIL**

17 _____
18 SAMUEL TALAVERA, JR, et al.,

19 *Plaintiffs,*

20 v.

21 QTS, INC., a California Corporation, et al.,

22 *Defendants.*
23 _____

Case No. BC501571

~~PROPOSED~~ AMENDED JUDGMENT
RE: CLASS ACTION SETTLEMENT

Complaint filed: February 22, 2013
Hearing Date: June 21, 2017
Hearing Time: 3:00 PM
Department: 323
Judge: Hon. Elihu M. Berle

24
25 Plaintiffs' Notice of Motion and Motion for Final Approval of Class Action Settlement came on
26 regularly for hearing on June 21, 2017. The Court granted final approval of the settlement as provided
27 in the written Settlement Agreement filed with the Court in this action on August 31, 2016 with the
28

1 Notice of Lodging of Revised Settlement Agreement, Which Replaces Exhibit A To Plaintiffs' Motion
2 for Preliminary Approval (hereafter "Settlement Agreement").

3 It is ORDERED, ADJUDGED AND DECREED that:

4 1. Judgment is entered in accord with the terms and conditions of the Settlement
5 Agreement.

6 2. Pursuant to California Code of Civil Procedure Section 664.6 and Rule 3.769(h) of the
7 California Rules of Court, this Court shall retain jurisdiction with respect to all matters related to the
8 administration and consummation of the settlement, and any and all claims, asserted in, arising out of,
9 or related to the subject matter of the lawsuit, including but not limited to all matters related to the
10 settlement and the determination of all controversies relating thereto.

11
12 Dated: 7/6, 2017

ELIHU M. BERLE

HONORABLE ELIHU M. BERLE
JUDGE, LOS ANGELES SUPERIOR COURT

JUL 06 2017

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT
UNLIMITED CIVIL

SAMUEL TALAVERA, JR, et al.,

Plaintiffs,

v.

QTS, INC., a California Corporation, et al.,

Defendants.

Case No. BC501571

~~PROPOSED~~ AMENDED ORDER
GRANTING FINAL APPROVAL OF
CLASS SETTLEMENT

Complaint filed: February 22, 2013
Hearing Date: June 21, 2017
Hearing Time: 3:00 PM
Department: 323
Judge: Hon. Elihu M. Berle

1 Plaintiffs' Motion for Final Approval of Class Action Settlement came before this Court in
2 Department 323, the Honorable Elihu M. Berle presiding, on June 21, 2017. The Court, having
3 considered all the motions, memoranda, declarations, and other papers submitted in support of the
4 preliminary and final approval of the Settlement and all oral arguments presented by Counsel for
5 the Parties, and with good cause appearing, finds and orders as follows:

6 IT IS HEREBY FINALLY ORDERED, ADJUDGED, AND DECREED THAT:

- 7 1. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and
8 over all Parties to the Action, including all Class Members.
- 9 2. **Definitions.** All terms used herein shall have the same meaning as defined in the
10 Settlement Agreement filed in this action on August 31, 2016, with the Notice of
11 Lodging of Revised Settlement Agreement, which replaces Exhibit A to Plaintiffs'
12 Motion for Preliminary Approval ("Settlement Agreement").
- 13 3. **Incorporation.** The Settlement Agreement is incorporated herein and has the full
14 force and effect of an Order of this Court. To the extent that parts of this Order that
15 summarize or paraphrase terms of the Settlement Agreement differ from the actual
16 terms stated in the Settlement Agreement, the terms of the Settlement Agreement
17 shall prevail.
- 18 4. **Class and Subclass Certification.** Class Members are properly certified as a class
19 for settlement purposes only. The Class is defined as: all persons who worked as
20 truck drivers for at least one (1) week for QTS, Inc., WinWin Logistics, Inc., and/or
21 LACA Express, Inc. from February 22, 2009, to March 1, 2016. A Retaliation
22 Subclass, as defined in the Settlement Agreement, is also certified for class
23 settlement purposes only.
- 24 5. **Fair, Reasonable, and Adequate.** The Court grants final approval of terms in the
25 Settlement Agreement. The Settlement was entered into in good faith; it is fair,
26 reasonable, and adequate; and it satisfies the requirements for final approval under

1 California law.

2 6. **Notice to Class Members.** Notice was provided to the Settlement Class in
3 compliance with the Settlement Agreement, California Code of Civil Procedure
4 section 382, California Civil Code section 1781, California Rules of Court 3.766
5 and 3.769, the California and United States Constitutions, and any other applicable
6 law, and constitutes the best notice practicable under the circumstances. The
7 Notice: (i) fully and accurately informed the Settlement Class Members about the
8 lawsuit and settlement, (ii) provided sufficient information so that Settlement Class
9 Members were able to decide whether to accept the benefits offered, opt out and
10 pursue their own remedies, or object to the proposed settlement; (iii) provided
11 procedures for Settlement Class members to file written objections to the proposed
12 settlement; and (iv) provided the final fairness hearing's time, date, and location.
13 The Notice fully satisfied the requirements of due process.

14 7. **Objections.** No Class Members have objected to the terms of the Settlement.

15 8. **Exclusions.** No Class Members have requested exclusion from this settlement.

16 9. **Retaliation Subclass Award.** The Court approves an allocation of \$300,000 for
17 the Retaliation Subclass, as described in the Revised Settlement Agreement.

18 10. **Class Representative Enhancement Awards.** The Court approves of Class
19 Representative Service Awards of \$6,500 each to Samuel Talavera, Jr.,
20 Cuahutemoc Cabuto, Jong Won Park, Mariano Alexander Saravia, Ramon Crespo,
21 Luis Buenrostro, Edwin Cabrera, Justo Dolores, Ulysses Coreas, Samuel Kim,
22 Victor Vitela, and Enrique Amaya.

23 11. **Class Counsel Fee and Costs.** The Court approves attorneys' fees and costs
24 totaling one million two hundred fifty thousand dollars (\$1,250,000.00), to be
25 allocated between The Wage Justice Center, Asian Americans Advancing Justice -
26 Los Angeles, and Gomez Law Group as set forth in the Second Joint Stipulation re:

1 Attorneys Fees filed on May 16, 2017, and attached hereto as Exhibit A.

2 12. **Administrator Costs.** Administrator Costs in the amount of \$16,051.09 to the
3 Settlement Administrator are approved.

4 13. **LWDA PAGA Allocation.** The portion of the settlement allocated to settle the
5 PAGA claims is \$10,000. A payment of \$7,500 to the California Labor and
6 Workforce Development Agency is approved. This amount represents a fair and
7 equitable sum for the resolution of claims.

8 14. **Cy Pres.** The Court approves of the *cy pres* award to the Legal Aid Foundation of
9 Los Angeles.

10 15. **Individual Settlement Payments.** The methodology used to calculate and pay
11 each Settlement Class Member's Individual Settlement Payment is fair and
12 reasonable and therefore approved. The Court hereby orders the Bankruptcy
13 Trustee to distribute the Individual Settlement Payments to Settlement Class
14 Members in accordance with the terms of the Settlement.

15 16. **Finality.** The Order and Judgment are intended to be a final disposition of the
16 Action in its entirety, and are intended to be immediately appealable.

17 17. **Retain Jurisdiction.** The Court shall retain continuing jurisdiction over the Action
18 and over all matters pertaining to the implementation, enforcement, administration,
19 and interpretation of the terms of the Settlement Agreement and this Judgment.
20 Except as provided to the contrary herein, any disputes or controversies arising out
21 of or with respect to interpretation, enforcement, or implementation of the
22 Settlement shall be presented by motion to the Court for resolution.

23 18. **Timeline for Final Accounting and Distribution.** All payments and distributions
24 are to be made in accordance with this Order and the Settlement Agreement.

25 19. **Next Hearing:** The Court set a hearing for March 9, 2018, at 8:30 a.m. for an Order
26 to Show Cause regarding compliance with the terms of the Settlement Agreement.

1 The Bankruptcy Trustee must file a declaration regarding the status of the
2 settlement distribution by March 2, 2018.

3 20. **Late Payments:** If any payment is received by the Bankruptcy Trustee more than
4 five days after the date that it is due, Defendants shall be obligated to pay interest
5 at the rate of five percent (5%) per annum, calculated daily from the date payment
6 was due, on the late payment. Any failure to make a timely payment shall be
7 considered a default. If Defendants fail to cure such a default after notice has been
8 provided to Defendants' Counsel by Class Counsel and the time to cure the default
9 as provided by the Settlement Agreement has passed, Plaintiffs and/or the
10 Bankruptcy Trustee shall have the right, but not the obligation, to immediately
11 begin enforcing their rights under the Settlement Agreement through any legal
12 means available to them.

13 21. **Notice of Default and Opportunity to Cure:** If Class Counsel believes that
14 Defendants have defaulted on their payment obligations under the Settlement
15 Agreement, Class Counsel shall notify Defendants' Counsel, in writing, of the
16 nature of the default. The defaulting Defendants will have fifteen (15) calendar days
17 from when the default occurred or five (5) business days from receipt of notice,
18 whichever is longer, to cure any deficiency. If Defendants are in default more than
19 once, the time to cure a second or subsequent default shall be reduced to ten (10)
20 calendar days from when the default occurred or three (3) business days from
21 receipt of notice, whichever is longer.

22 22. **Default and Enforcement:** It will be considered a material breach of the
23 Settlement Agreement if Defendants default on any payment or fail to fulfill any
24 material condition of the Settlement Agreement and fail to cure such default within
25 the time period specified in the Settlement Agreement. Upon such a breach, all
26 payments due under the Settlement Agreement shall become immediately due and
27

1 payable, including all future installment payments, and interest shall begin accruing
2 on the total amount due at the statutory rate for judgments in California in effect at
3 that time (ten percent [10%] per annum as of the date of the Settlement Agreement).
4 Interest will begin accruing at this rate starting on the day after the time to cure has
5 expired. Upon such a breach, Plaintiffs and/or the Bankruptcy Trustee shall have
6 the right, but not the obligation, to immediately begin enforcing their rights under
7 the Settlement Agreement, including by seeking an order from the Court and/or the
8 Bankruptcy Court to enforce the judgment in the Action. Additionally, upon such
9 a breach by Defendants, Plaintiffs may immediately move to enforce the executed
10 and notarized deeds of trust, due to Class Counsel within ten business days of the
11 Effective Date, by any lawful means, including by requesting an order for
12 foreclosure and sale of the property described in the trust deeds.

13 23. **Timeline for Final Accounting and Distribution.** The Court also sets the
14 following timeline for filing deadlines, payments, and hearings:

- 15 • Effective Date: the date on which the Court enters a final Judgment in the
16 California Superior Court Actions and either the time for appeal has expired
17 with no appeal having been taken or, if an appeal is taken, the appeal is resolved
18 and the Judgment is final [Settlement Agreement, ¶ III.BB]
- 19 • First Payment due to the Bankruptcy Trustee and executed and notarized deeds
20 of trust and subordination agreement due to Class Counsel: Ten business days
21 after the Effective Date [Settlement Agreement, ¶¶ III.H.8, III.B.5]
- 22 • Deadline for distribution of the first payment: 30 days from payment
23 [Settlement Agreement, ¶ III.F.6]
- 24 • March 2, 2018: Deadline to submit a declaration from Class Counsel regarding
25 status of first distribution.
- 26 • March 9, 2018 at 8:30 a.m.: Order to Show Cause regarding compliance with

1 the terms of the Settlement Agreement.

- 2 • Second payment due: one year after the first payment was due.
- 3 • Deadline for distribution of second payment: 30 days from the receipt of the
- 4 second payment.
- 5 • Third payment due: two years after the first payment was due.
- 6 • Deadline for distribution of third payment: 30 days after the receipt of the third
- 7 payment.
- 8 • Fourth payment due: three years after the first payment was due.
- 9 • Deadline for distribution of fourth payment: 30 days after the receipt of the
- 10 fourth payment.
- 11 • Fifth payment due: four years after the first payment was due.
- 12 • Deadline for distribution of fifth payment: 30 days after the receipt of the fifth
- 13 payment.
- 14 • Sixth payment due: five years after the first payment was due.
- 15 • Deadline for the distribution of the sixth payment: 30 days after the receipt of
- 16 the sixth payment.

17 **IT IS SO ORDERED.**

18
19 Dated: July 6, 2017

ELIHU M. BERLE

HONORABLE ELIHU M. BERLE
JUDGE, LOS ANGELES SUPERIOR COURT

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11 *Attorneys for PLAINTIFFS and PROPOSED CLASS*
12 *Additional Counsel Listed on Subsequent Page*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
15 **UNLIMITED CIVIL**

17 SAMUEL TALAVERA, JR., *et al.*,
18 individually and on behalf of others similarly
19 situated,

19 *Plaintiffs,*

20 v

21 QTS, INC., a California Corporation, *et al.*,

22 *Defendants.*

Case No.: BC501571
Related to: BC545988 and BC573629

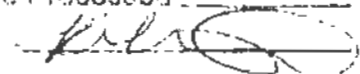
[Assigned for All Purposes to:
The Hon. Elihu M. Berle - Dept. 323]

23 **SECOND JOINT STIPULATION RE:**
24 **ATTORNEY FEE MOTION**

25 RECEIVED
26 Central Civil West

27 MAY 16 2017

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ATTORNEYS FOR ENRIQUE AMAYA AND PROPOSED CLASS (RELATED MATTER)

- 1 Court's approval.
- 2 b. Talavera's Counsel, Wage Justice Center, is requesting reimbursement of
- 3 \$47,129.88 in costs and expenses incurred in this litigation. The Wage Justice
- 4 Center submitted a detailed cost memorandum as Exhibit 5 to the Sirotly
- 5 Declaration in support of Talavera Counsel's Fee Motion. That memorandum has
- 6 been reproduced here as Exhibit B and B reflects only reimburseable costs and
- 7 expenses. The amount actually awarded will be subject to the Court's approval.
- 8 c. Talavera's Counsel, Asian Americans Advancing Justice – Los Angeles, is
- 9 requesting reimbursement of \$1,058.38 in costs and expenses incurred in this
- 10 litigation. Asian Americans Advancing Justice – Los Angeles submitted a detailed
- 11 cost memorandum as Exhibit 12 to the Ochi Declaration in support of Talavera
- 12 Counsel's Fee Motion. That memorandum has been reproduced here as Exhibit C
- 13 and reflects only reimburseable costs and expenses. The amount actually awarded
- 14 will be subject to the Court's approval.
- 15 7. In March 2017, Talavera's Counsel and Amaya's Counsel filed separate fee motions
- 16 because of a dispute regarding the method of distributing attorneys' fees.
- 17 8. Since filing these motions, Talavera's Counsel and Amaya's Counsel have continued to
- 18 meet and confer and have reached an agreement regarding a proposed allocation of
- 19 attorney fees among law firms.
- 20 9. During the meet and confer process, Amaya's Counsel produced itemized time records and
- 21 contended that hundreds of hours had been excluded from the lodestar submitted to the
- 22 court. Talavera's Counsel reiterated that the time records it had submitted with its fee
- 23 motion had also been trimmed. Despite their continuing disagreements regarding the
- 24 validity of each other's lodestar, Talavera's Counsel and Amaya's Counsel agreed on a
- 25 proposed allocation of attorney fees among law firms which was based on the respective
- 26 lodestar totals with some adjustments.
- 27 10. Talavera's Counsel and Amaya's Counsel propose the following allocation of attorney

1 fees; to the extent the Court awards less than the requested total amount of attorney fees,
2 all law firms' recovery would be reduced pro rata.

- 3 a. Amaya's Counsel would be awarded \$130,636.68 (11.36% of total) - to be reduced
4 proportionately if the total fee award is reduced.
- 5 b. Amaya's Counsel would receive 50% of its award from the first disbursement, (i.e.,
6 \$65,318.34).
- 7 c. Amaya's Counsel's remaining award would be paid out over three (3) years instead
8 of five (5) years (i.e., \$21,772.78 per year for three (3) years).
- 9 d. Talavera's Counsel would be awarded \$1,019,357.16 (88.64% of total) - to be
10 reduced proportionately if the total fee award is reduced.
- 11 e. The Wage Justice Center will receive a total of \$580,275.39 (50.46%) and Asian
12 Americans Advancing Justice – Los Angeles will receive \$439,081.77 (38.18%).
- 13 f. Talavera's Counsel would receive 45% of its award from the first disbursement
14 (i.e. \$261,673.13 for the Wage Justice Center and \$198,002.37 for Asian
15 Americans Advancing Justice – Los Angeles).
- 16 g. Talavera's Counsel's award would be paid out according to the schedule set forth
17 in the Class Action Settlement Agreement. The detailed breakdown of distributions
18 per law firm are set forth in Exhibit D.
- 19

20 Therefore, IT IS HEREBY STIPULATED by and between the *Talavera* Plaintiffs and Enrique
21 Amaya to the following:

- 22 1. The attorney fee award shall be allocated as 88.64% to Talavera's Counsel and 11.36% to
23 Amaya's Counsel after all reimbursable costs are deducted and law firm of Rivera and
24 Shackelford receives its \$40,000 allocation as agreed in October 2016.
- 25 2. The attorney fee award shall be distributed according to Exhibit D.

26 SO STIPULATED.

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Dated: May 12, 2017

ASIAN AMERICANS ADVANCING JUSTICE
A Nonprofit Organization

BY: Nicole Ochi

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Dated: May 12, 2017

GOMEZ LAW GROUP P.C.

BY: Alvin Gomez / Stephen Noel Iig

Alvin Gomez / Stephen Noel Iig
Attorney for Plaintiff Enrique Amaya and Proposed
Class