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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ALISSA WHITNEY, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

FIVE J'S FAMILY ENTERPRISES L.P., a
California Limited Partnership; and Does 1
through 50, Inclusive,

Defendant.

Case No. CIVSB2129063

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: November 1, 2023
Time: 9:00 a.m.

Judge: Hon. David S. Cohn
Dept.: 26

1 Plaintiff's motion for an order finally approving the Class, Collective, and Representative
2 Settlement Agreement and Class Notice ("Agreement") and Motion for Class Counsel Fees and
3 Litigation Expenses Payment and Class Representative Service Payment duly came on for hearing
4 on November 1, 2023, before the above-entitled Court. Zakay Law Group, APLC, and the JCL Law
5 Firm, APC, appeared on behalf of Plaintiff ALISSA WHITNEY ("Plaintiff"). Clark Hill, LLP
6 appeared on behalf of Defendant FIVE J'S FAMILY'S ENTERPRISES L.P., a California Limited
7 Partnership (hereinafter "Defendant").

8 **I.**

9 **FINDINGS**

10 Based on the oral and written argument and evidence presented in connection with the
11 motion, the Court makes the following findings:

12 1. All capitalized terms used herein shall have the same meaning as defined in
13 the Agreement.

14 2. This Court has jurisdiction over the subject matter of this litigation pending
15 in the California Superior Court for the County of San Bernardino ("Court"), Case No.
16 CIVSB2129063, entitled *Whitney v. Five J's Family Enterprises L.P.* and over all Parties to this
17 litigation, including the Class.

18 **Preliminary Approval of the Settlement**

19 3. On June 7, 2023, the Court granted preliminary approval of a class-wide
20 settlement. At this same time the court approved certification of a provisional settlement class for
21 settlement purposes only. The Court confirms this Order and finally approves the settlement and
22 the certification of the Class.

23 **Notice to the Class**

24 4. In compliance with the Preliminary Approval Order, the Class Notice was
25 mailed by first class mail to the Class Members at their last known addresses on July 13, 2023.

26 5. Mailing of the Class Notice to their last known addresses was the best notice
27 practicable under the circumstances and was reasonably calculated to communicate actual notice of
28 the litigation and the proposed settlement to the members of the Class Members. The Court finds

1 that the Class Notice provided fully satisfies the requirements of California Rules of Court, rule
2 3.769.

3 6. The Response Deadline for opting out or objecting was August 28, 2023.
4 There was an adequate interval between notice and deadline to permit Class Members to choose
5 what to do and act on their decision. No Class Members objected. No Class Members requested
6 exclusion.

7 **Fairness Of The Settlement**

8 7. The Agreement provides for a Gross Settlement Amount of \$950,000.00.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to allow
15 the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. No objections were received. No requests for exclusion were
20 received.

21 e. The participation rate is high. 100% of Class Members will be
22 participating in the Settlement and will be sent settlement payments.

23 8. The consideration to be given to the Class Members under the terms of the
24 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
25 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
26 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
27 litigation and the delays which would ensue from continued prosecution of the Action.

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1 9. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Participating Class Members.

3 **PAGA Penalties**

4 10. The Agreement provides for a payment of PAGA Penalties in the amount of
5 \$50,000.00. The Court has reviewed the PAGA Penalties amount and finds and determines that the
6 PAGA Penalties and the allocation of \$37,500.00 to LWDA and \$12,500.00 of the PAGA Penalties
7 to Aggrieved Employees is fair and reasonable and complies with the requirements set forth in
8 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

9 **Attorneys' Fees and Costs**

10 11. The Agreement provides for a Class Counsel Attorneys' Fees and Costs in
11 the amount of up to Three Hundred Forty-One Thousand, Six Hundred Sixty-Six Dollars and Sixty-
12 Six Cents (\$341,666.66). Subject to Court approval, the Class Counsel Attorneys' Fees and Costs
13 consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount, or Three
14 Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$316,666.66) and
15 reimbursement of costs and expenses in the amount of Twenty-Five Thousand Dollars and Zero
16 Cents (\$25,000.00).

17 12. A Class Counsel Attorneys' Fees and Costs of Three Hundred Forty-One
18 Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$341,666.66) comprised of
19 attorneys' fees in the amount of Three Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars
20 and Sixty-Six Cents (\$316,666.66) and reimbursement of costs and expenses in the amount of
21 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) is reasonable in light of the contingent
22 nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class
23 Counsel. The requested attorneys' fee award represents 1/3 of the common fund, which is
24 reasonable, and is supported by Class Counsel's lodestar.

25 **Class Representative Service Payment**

26 13. The Agreement provides for a Class Representative Service Payment of up
27 to Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff, Alissa Whitney, subject to the
28 Court's approval. The Court finds that the amount of Ten Thousand Dollars and Zero Cents

1 (\$10,000.00) is reasonable in light of the risks and burdens undertaken by the Plaintiff in this class
2 action litigation.

3 **Claims Administration Costs**

4 14. The Agreement provides for Claims Administration Costs to be paid in an
5 amount not to exceed \$20,000.00. The Declaration of the Claims Administrator provides that the
6 actual claims administration expenses were \$18,850.00. The amount of this payment is reasonable
7 in light of the work performed by the Settlement Administrator.

8 **II.**

9 **ORDERS**

10 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

11 1. The Class is certified for the purposes of settlement only. The Settlement
12 Class is hereby defined to include:

13 All of Defendant's current and former non-exempt employees, employed in
14 California at any time during the period beginning October 12, 2017 up to and
15 including April 7, 2023.

16 2. There are 1,365 members of the Class. Every person in the Class who did
17 not opt out is a Settlement Class Member. After providing Notice to the Class, there are zero opt-
18 outs to the Settlement.

19 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
20 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
21 this Order and the terms of the Agreement.

22 4. Defendant shall fund the Gross Settlement Amount on the Funding Date. In
23 exchange the Class Members shall release the "Released Parties" from the "Released Class Claims"
24 and the "Aggrieved Employees" shall release the "Released Parties" from the "Released PAGA
25 Claims."

26 a. The "Released Parties" means Defendant and its past, present, and
27 future parents, subsidiaries, affiliated companies, agents, managing agents, exempt-employees,
28 servants, officers, directors, owners (whether direct or indirect), general partners, limited partners,

1 trustees, representatives, shareholders, stockholders, members, mortgagees or ground lessors,
2 attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or
3 partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint
4 employers, potential and/or alleged joint employers, temporary staffing agencies, dual employers,
5 potential and/or alleged dual employers, co-employers, potential and/or alleged co-employers,
6 common law employers, contractors, affiliates, service providers, alter-egos, potential and/or
7 alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or
8 alleged to have joint liability, and all of their respective past, present and future employees, directors,
9 officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders,
10 fiduciaries, parents, subsidiaries, other service providers, and assigns and any and all persons and/or
11 entities acting under, by, through or in concert with any of them.

12 b. The “Released Class Claims” include any and all claims, wage and
13 hour claims, rights, demands, liabilities and causes of action of any nature or description
14 alleged/asserted in the Action arising from and/or related to the facts and claims alleged/asserted in
15 the Action, that could have been alleged/asserted in the Action based on the facts and claims alleged
16 in the Action, and the facts and claims asserted in, arising from or related to, or could have been
17 alleged in the PAGA Notice identified on the LWDA’s website as LWDA-CM-840158-21. The
18 Released Class Claims expressly excludes release of PAGA claims, which are separately released
19 herein below as “Released PAGA Claims.”

20 c. The “Aggrieved Employees” are defined as all individuals who are or
21 previously were employed by Defendant in California during the PAGA Period. The PAGA Period
22 is defined as the period from August 3, 2020 up to and including April 7, 2023.

23 d. The “Released PAGA Claims” include any and all claims for PAGA
24 penalties asserted in the Action and arising from or reasonably related to the facts and claims alleged
25 in the Action, or that could have been alleged in the Action based on the facts and claims alleged in
26 the Action, and/or Plaintiff’s PAGA Notice identified on the LWDA’s website as LWDA-CM-
27 840158-21, including, without limitation, claims for PAGA penalties arising from Labor Code
28 sections 200, 201, 201.3, 201.5, 202, 203, 204, 205.5, 210, 218.5, 218.6, 226, et seq., 226.2, 226.3,

1 226.7, 246, 510, et seq., 512, 515, 558, 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1197.14,
2 1198, et seq., 1198.5, 1199, 2695, et seq., 2698, et seq., 2699, 2699.3, 2802, 2804, Cal. Code of
3 Regulations, Title 8, Section 11070(14), Cal. Code of Regulations, Title 8, Section 1
4 1070(14)(failure to provide suitable seating), and the applicable Industrial Welfare Commission
5 Wage Order(s), including Wage Order 4-2001, Section 14.

6 5. Class Counsel are awarded attorneys' fees in the amount of Three Hundred
7 Forty-One Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$341,666.66) comprised
8 of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount, or Three Hundred
9 Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$316,666.66) and
10 reimbursement of costs and expenses in the amount of Twenty-Five Thousand Dollars and Zero
11 Cents (\$25,000.00). Class Counsel shall not seek or obtain any other compensation or
12 reimbursement from Defendants, Plaintiff, or members of the Class.

13 6. The payment of the Class Representative Service Payment to the Plaintiff in
14 the amount of \$10,000.00 is approved.

15 7. The payment of \$18,850.00 to the Claims Administrator for Claims
16 Administration Costs is approved.

17 8. The PAGA Penalties of \$50,000.00 is hereby approved as fair, reasonable,
18 adequate, and adequately protects the interests of the public and the LWDA. Further, the Court
19 finds that Plaintiff and Class Counsel negotiated the PAGA Penalties at arms-length, absent of any
20 fraud or collusion.

21 9. Final Judgment is hereby entered in this action. The Final Judgment shall
22 bind each Participating Class Member.

23 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
24 California and all PAGA Members, pursuant to the California Private Attorneys' General Act
25 ("PAGA").

26 11. The Court further finds and determines that Class Counsel satisfied California
27 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising
28 under the Private Attorney General Act ("PAGA") on May 15, 2023, and again on July 6, 2023.

1 12. The Court orders Class Counsel to comply with California Labor Code §
2 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
3 entry of this Order.

4 13. The Agreement is not an admission by Defendant, nor is this Final Approval
5 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
6 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
7 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
8 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
9 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
10 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
11 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
12 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
13 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
14 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
15 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
16 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
17 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
18 or issue preclusion or similar defense as to the claims being released by the Settlement.

19 14. Notice of entry of this Final Approval Order and Judgment shall be given to
20 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
21 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
22 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
23 in the Class Notice.

24 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
25 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
26 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
27 connection with the distribution of settlement benefits.

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1 16. If the Settlement does not become final and effective in accordance with the
2 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
3 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
4 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

5 **IT IS SO ORDERED.**

6 DATED: _____, 2023
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9 _____
10 Hon. David Cohn
11 JUDGE OF THE SUPERIOR COURT
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