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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JIMMY MACIEL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SHAMBAUGH & SON, L.P., a Texas
Limited Partnership; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 20STCV30747
*[Assigned to Hon. Elihu M. Berle, Dept 6 for
all purposes]*

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF JUDGMENT**

Complaint Filed: August 19, 2021

1 The Motion for Final Approval of the Settlement (the “Final Approval Motion”) as set
2 forth in the Class Action and PAGA Settlement Agreement (“Settlement Agreement”) came for a
3 hearing in Department 6 of the above-entitled court. The Final Approval Motion was unopposed
4 by Defendant Shambaugh & Son, L.P.

5 Having considered the Final Approval Motion, the Settlement Agreement, the
6 Declarations, and all other materials properly before the Court and having conducted an inquiry
7 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement
8 Agreement was entered by all parties in good faith, and the Settlement Agreement is approved.
9 Due and adequate notice having been given to the Class, and the Court having considered the
10 Settlement Agreement, all papers filed and proceedings had herein and all oral and written
11 comments received regarding the proposed settlement, and having reviewed the record in this
12 Action, and good cause appearing,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

14 1. The Court, for purposes of this Judgment and Order (“Judgment”), refers to all
15 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

16 2. The Court has jurisdiction over the subject matter over this Action, the Class
17 Representative, the Class Members, and Defendant.

18 3. The Court finds that the distribution of the Class Notice, as provided for in the
19 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
20 under the circumstances to all Class Members and fully met the requirements of California law
21 and due process under the California and United States Constitution. Based on evidence and
22 other material submitted, the actual notice to the class was adequate.

23 4. The Court finds that the instant Action presented a good faith dispute of the
24 claims alleged, and the Court finds in favor of settlement approval.

25 5. The Released Class Claims on behalf of the Participating Class Members
26 included:

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1 a. all claims that were alleged, or reasonably could have been alleged, based on
2 the facts stated in the operative Complaint, including claims for overtime;
3 minimum wages; meal period premiums; rest break premiums; vested
4 vacation; wage statements; waiting time penalties; expense reimbursement;
5 and based on violations of Labor Code sections 200, 201-204, 204.1, 208,
6 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558,
7 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, IWC Wage Order 9, including
8 §§ 3(A), 4, 3(A), 11, 12, or Industrial Welfare Commission Order #4, or
9 Business and Professions Code section 17200, et seq., which are premised on
10 the same allegations, and Cal. Code Regs., tit. 8, section 11090 (the “Released
11 Class Claims”).

12 6. The Released PAGA Claims on behalf of the Aggrieved Employees included.

13 a. all claims for PAGA penalties that were alleged, or reasonably could have
14 been alleged, based on the facts stated in the Operative Complaint and the
15 PAGA Notice, including violations premised on violation of Labor Code
16 sections 200, 201-204, 204.1, 208, 210, 218.6, 221, 222, 223, 226, 226.3,
17 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,
18 1199, 2802, IWC Wage Order 9, including §§ 3(A), 4, 3(A), 11, 12, and Cal.
19 Code Regs., tit. 8, section 11090 (the “Released PAGA Claims”).

20 7. There were no Objections or Requests for Exclusion to the Settlement. Thus, all
21 Class Members are Participating Class Members, who are entitled to an Individual Class
22 Payment pursuant to the Settlement and this Judgment. Likewise, all Aggrieved Employees
23 (including the one opt-out) are entitled to an Individual PAGA Payment, constituting a pro rata
24 share of PAGA Penalties.

25 8. The Court approves the Settlement, as set forth in the Settlement Agreement and
26 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling
27 Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the
28 Settlement Agreement.

1 9. The Settling Parties are to bear their own costs, except as otherwise provided in
2 the Settlement Agreement.

3 10. For purposes of effectuating this Order and Judgment, this Court has certified the
4 following class: “all current and former non-exempt/hourly employees of Defendant, who are not
5 represented by any union (i.e., non-union employees) and who worked for Defendant in
6 California at any time during the Class Period of August 19, 2017, to November 30, 2022.” The
7 Court deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a).

8 11. With respect to the Class and for purposes of approving this Settlement, this Court
9 finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
10 joinder of all members is impracticable; (b) there are questions of law or fact common to the
11 Class Members, and there is a well-defined community of interest among the Class Members
12 with respect to the subject matter of the Action; (c) the claims of the Class Representative are
13 typical of the claims of the Class Members; (d) the Class Representative has fairly and
14 adequately protected the interests of the Class Members; (e) a class action is superior to other
15 available methods for an efficient adjudication of this controversy; and (f) the counsel of record
16 for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the Plaintiff
17 in his individual and representative capacity and for the Settlement Class.

18 12. By this Judgment, the Class Representative shall release, relinquish, and
19 discharge, and each of the Class Members shall be deemed to have, and by operation of the
20 Judgment shall have, fully, finally, and forever released, relinquished, and discharged all
21 Released Class Claims, as defined in the Settlement Agreement.

22 13. Neither the Settlement Agreement nor the Settlement contained therein, nor any
23 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
24 or the Settlement (i) is or may be deemed to be or may be used by the Class Representative or
25 Participating Class Members as an admission of, or evidence of, the validity of any of the
26 Released Class Claims, or of any wrongdoing or liability of Defendant or any of the other
27 Released Parties; or (ii) is or may be deemed to be or may be used by any of the Class
28 Representative or Participating Class Members as an admission of, or evidence of, any fault or

omission of Defendant or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendant or any of the other Released Parties may file the Settlement Agreement and/or the Judgment from this Action in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. The Gross Settlement Amount to be paid under the Settlement Agreement is \$450,000. From this amount, Class Counsel sought a Class Counsel Fee Payment of \$150,000, Class Counsel Litigation Expenses of \$12,157.93, a Service Payment for Class Representative Jimmy Maciel of \$5,000, an Administrator Expenses Payment of \$7,060.16 to Phoenix Settlement Administrators, and \$30,000 to the LWDA for PAGA penalties and \$10,000 to the Aggrieved Employees for PAGA Penalties. Defendant does not oppose these requests. In addition, and concurrently with paying the Settlement Amount, Defendant shall separately pay all employer payroll taxes owed on the e Wage Portions of the Individual Class Payments, which shall be reported through the Settlement Administrator. The Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the payments set forth below from the Settlement Amount:

A) \$150,000 to Class Counsel (Lauby Mankin Lauby LLP) for Class Counsel Fee Payment in light of the benefit obtained on behalf of the Class;

B) \$12,157.93 to Class Counsel for the Class Counsel Litigation Expenses;

C) \$5,000 to Class Representative Jimmy Maciel as a Service Payment;

D) \$7,060.16 to the Settlement Administrator, Phoenix Settlement Administrators;

E) \$30,000 to the LWDA;

F) \$10,000 to the Aggrieved Employees on a pro rata basis;

G) After deducting the foregoing payments from the Gross Settlement

Amount, the remainder shall form the Net Settlement Amount payable to

the Participating Class Members as set forth in the Settlement Agreement
and as calculated by the Settlement Administrator.

15. The Settlement Administrator is directed to calculate the Participating Class Member's Individual Class Payments and the Aggrieved Employees' Individual PAGA Payments and issue all payments within in accordance with the Settlement Agreement and this Order/Judgment.

16. Concurrently with mailing the settlement checks to the Participating Class Members and Aggrieved Employees, the Settlement Administrator shall include a Notice of Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the check for the Participating Class Members, noting the following: "Please be advised that on [insert date], 2023, the Superior Court of California for the County of Los Angeles entered Judgment in the case entitled *Maciel v. Shambaugh & Son, L.P.*, pending in Superior Court of the State of California, County of Los Angeles, Case No.20STCV30747, on behalf of all current and former non-exempt/hourly employees of Defendant Shambaugh & Son, L.P, who are not represented by any union (i.e., non-union employees) and who worked for Defendant in California at any time during the Class Period of August 19, 2017, to November 30, 202." "

17. The Class Members shall have 180 days to negotiate the settlement check from the date of issuance by the Settlement Administrator. In the event that a Class Member does not negotiate his/her check within this time period, the check will be canceled. The value of the unclaimed funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be issued to the State Controller's Office for the State of California in the name of the Class Member.

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1 18. The following dates shall govern for purposes of this implementing this
2 Order/Judgment:

3 Date this Order is entered (if there are no 4 objections)	The Effective Date occurs.
5 Within 10 business days of the Effective Date	Defendant shall issue the payment to the 6 Settlement Administrator.
7 Within 10 business days after receipt of 8 Payment	Settlement Administrator to issue all 9 Individual Class Payments to the 10 Participating Class Members, Individual 11 PAGA Payments to the Aggrieved 12 Employees, payment to Class Counsel for 13 the Class Counsel Fee Payment and 14 Litigation Expenses, the Service Payment to 15 the Class Representative, the payment to the 16 LWDA for PAGA Penalties, and pay itself 17 the Administrator Expenses Payment.
18 180 days after payment is issued	Deadline for Class Members to cash checks.
19 30 days after the 180-day check cashing 20 deadline	Counsel to file a declaration from the 21 Settlement Administrator setting forth the 22 disbursements that were actually made, 23 including any uncashed checks and status of 24 process of forwarding unclaimed funds to 25 the State Controller.
26 TBD	Non-appearance hearing re: status of 27 disbursement, filing of Declaration from 28 Administrator.

19. This document shall constitute a Judgment for purposes of California Rule of
Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the
Class Representative, the Class Members, and Defendant for the purposes of supervising the
implementation, enforcement, construction, administration, and interpretation of the Settlement
Agreement and this Judgment.

IT IS SO ORDERED.

Dated: _____

HON. ELIHU M. BERLE
JUDGE OF THE SUPERIOR COURT