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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SOLANO**

18 DIEN TRUONG, as an individual and on
19 behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 DS SERVICES OF AMERICA, INC., a
23 Delaware corporation; and DOES 1
24 through 50, inclusive,

25 Defendants.

Case No.: FCS054399

[Assigned to the Hon. E. Bradley Nelson, Dept. 4]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 29, 2021

Time: 9:00 A.M.

Dept.: 4

Complaint Filed: February 20, 2020

FILED/ENDORSED
Clerk of the Superior Court

AUG 26 2021

By [Signature]
DEPUTY CLERK

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Attorneys for Plaintiff, the Class, and Aggrieved Employees

1 Plaintiff Dien Truong ("Plaintiff" or "Truong") and the settling Defendant DS Services of
2 America, Inc. ("Defendant" or "DS") (together, the "Parties") have entered into Joint Stipulation
3 and Settlement Agreement ("Stipulation" or "Settlement Agreement") to settle the above-
4 captioned class action subject to the Court's approval (the "Settlement").

5 This matter is now before the Court on Plaintiff's Motion for Final Approval of Class
6 Action Settlement, including approval of an Enhancement Award for the Named Plaintiff and
7 Class Counsel's Application for a Fee and Expense Award. The Court has read, heard, and
8 considered all the pleadings and documents submitted, and the presentations made in connection
9 with the Motion which came on for hearing on July 29, 2021.

10 **I. BACKGROUND**

11 On February 20, 2020, Plaintiff initiated this action in Solano Superior Court, alleging the
12 following claims: (1) violation of Cal. Labor Code §§ 1194, 1197, and 1197.1; (2) violation of
13 Cal. Labor Code §§ 226.2 and 226.7; (3) violation of Cal. Labor Code § 226(a); and (4) violation
14 of Cal. Bus. and Prof. Code § 17200, et seq. (derivative of the meal period cause of action).

15 **A. Class Members**

16 The "Settlement Class" or "Class Members" are defined as (1) "all non-exempt
17 employees who were employed by Defendant or its predecessors in the State of California from
18 January 1, 2019 through the date of preliminary approval, and who were paid a base hourly rate
19 less than the applicable minimum wage at any time during the Class Period." The Class Period
20 is defined as "January 1, 2019, through the date of preliminary approval." This Court granted
21 preliminary approval on March 29, 2021, such that the class period ended as of March 29, 2021.

22 **B. Operation of the Settlement.**

23 Pursuant to the Preliminary Approval Order, this Court conditionally certified the
24 Settlement Class and granted preliminary approval of the Settlement. The Preliminary Approval
25 Order also approved of the proposed form of class notice and notice plan. The Court entered the
26 Preliminary Approval Order after review and consideration of the pleadings filed in connection
27 herewith, and the oral presentations made by counsel at the hearing.

28 In compliance with the Preliminary Approval Order, the class notice was sent to all Class

1 Members via first class mail. The notice process was timely completed.

2 This Court finds that the Settlement appears to be the product of serious, informed, non-
3 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
4 treatment to any individuals. The Court finds that the Settlement was entered into in good faith
5 pursuant to California *Code of Civil Procedure* section 877.6. The Court further finds that the
6 Settlement is fair, reasonable, and adequate and that Plaintiff has satisfied the standards for final
7 approval of a class action settlement under California law. Under the provisions of California
8 *Code of Civil Procedure* section 382 and Federal Rule of Civil Procedure 23, as approved for use
9 by the California state court in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971), the trial
10 court has discretion to certify a class where:

11 [Q]uestions of law or fact common to the members of the class
12 predominate over any questions affecting only individual
13 members, and that a class action is superior to the available
14 methods for the fair and efficient adjudication of the controversy
... Fed. R. Civ. Proc. 23.

15 Certification of a settlement class is the appropriate judicial device under these circumstances.

16 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
17 FOLLOWS:

18 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
19 Settlement Agreement filed in this case.

20 2. The Court has jurisdiction over the subject matter of the litigation, the Class
21 Representative, the other Members of the Settlement Class, and Defendant.

22 3. The Court finds that the dissemination of the Notice of Class Action Settlement as
23 disseminated to the Class Members, constituted the best notice practicable under the
24 circumstances to all Persons within the definition of the Class, and fully met the requirements of
25 California law and due process under the United States Constitution.

26 4. The Court approves the settlement of the above-captioned action, as set forth in
27 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The
28 Settling Parties are directed to perform in accordance with the terms set forth in the Settlement

1 Agreement.

2 5. Except as otherwise provided in the Settlement Agreement, the Settling Parties
3 are to bear their own costs and attorneys' fees.

4 6. The Court hereby certifies the following Settlement Class for settlement purposes
5 only: (1) "all non-exempt employees who were employed by Defendant or its predecessors in the
6 State of California from January 1, 2019 through the date of preliminary approval [March 29,
7 2021], and who were paid a base hourly rate less than the applicable minimum wage at any time
8 during the Class Period."

9 7. With respect to the Settlement Class and for purposes of approving the Settlement
10 only and for no other purpose, this Court finds and concludes that: (a) the members of the
11 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
12 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
13 community of interest among Members of the Settlement Class with respect to the subject matter
14 of the claims in the Litigation; (c) the claims of Class Representative is typical of the claims of
15 the members of the Settlement Class; (d) the Class Representative has fairly and adequately
16 protected the interests of the members of the Settlement Class; (e) a class action is superior to
17 other available methods for an efficient adjudication of this controversy; and (f) the counsel of
18 record for the Class Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the
19 Plaintiff in her individual and representative capacity and for the Settlement Class.

20 8. Defendant shall fund \$725,000.00 of the total Gross Settlement Amount pursuant
21 to the terms of the Settlement Agreement.

22 9. The Court approves the individual Settlement Share amounts, which shall be
23 distributed pursuant to the terms of the Settlement Agreement.

24 10. The \$725,000.00 Gross Settlement Amount shall be used to pay (a) Class Counsel
25 attorneys' fees in the amount of \$241,666.67 and reimbursement of costs in the amount of
26 \$15,012.65; (b) a service award to the Class Representative Dien Truong to reimburse him for
27 his unique services in the following amount: ~~\$15,000.00~~ ^{\$16,000.00}; (c) the sum of \$30,000.00 to be paid to
28 the LWDA for PAGA Penalties; and (d) \$2,997.45 to the administrator IL YM ("Administrator")

1 for its fees and costs relating to the claims administration process. The Court finds that these
2 amounts are fair and reasonable. Defendant is directed to make such payments in accordance
3 with the terms of the Settlement Agreement. The allocation and distribution of these amounts
4 shall be performed by Claims Administrator.

5 11. The Court hereby enters final judgment in this case in accordance with the terms
6 of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of
7 the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction
8 over the action and the Parties, including all Settlement Class Members, for purposes of
9 enforcing and interpreting this Order and the Settlement.

10 IT IS SO ORDERED AND ADJUDGED.

11
12 DATED: 8/23/2021



HON. E. BRADLEY NELSON
SUPERIOR COURT OF CALIFORNIA