

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TAMARA WHITMER, individually, in a
Representative capacity, and on behalf of other
members of the public similarly situated,

Plaintiff,

vs.

USP MISSION HILLS, INC., a California
corporation and DOES 1-10, inclusive,

Defendants.

Case No. 20CHCV00209

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT PURSUANT TO THE
TERMS OF JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT**

[Assigned for all purposes to
The Honorable David S. Cunningham,
Dept. 11]

Action Filed: March 18, 2020
Trial Date: None

1 This matter came on for hearing on [REDACTED], upon the Motion for Preliminary
2 Approval of the proposed settlement of this action on the terms set forth in the Joint Stipulation re:
3 Class Action Settlement (the “Settlement” or “Stipulation”), attached hereto as **Exhibit 1**. Having
4 considered the Settlement, all papers and proceedings held herein, and having reviewed the entire
5 record in this action, Case No. 20CHCV00209, entitled *Tamara Whitmer v. USP Mission Hills,*
6 *Inc.* (the “Action”), and good cause appearing, the Court finds that:

7 WHEREAS, plaintiff Tamara Whitmer (“Plaintiff”) has alleged claims against defendant
8 USP Mission Hills, Inc. (“Defendant”) on behalf of herself and on behalf of others similarly
9 situated, comprising: “All persons who worked for defendant USP Mission Hills, Inc. as non-
10 exempt employees in the State of California at any time during the Class Period”; and

11 WHEREAS, Plaintiff asserts claims against Defendant for (1) Failure to Pay Minimum
12 Wage; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to
13 Provide Rest Breaks; (5) Failure to Provide Compliant Wage Statements; (6) Failure to Pay All
14 Wages Upon Separation; (7) Failure to Reimburse Business Expenses; (8) civil penalties under the
15 Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”);
16 and (9) Unfair Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and

17 WHEREAS, Defendant expressly denies the allegations of wrongdoing and violations of
18 law alleged in this Action, and further denies any liability whatsoever to Plaintiff or to the Class
19 Members; and

20 WHEREAS, without admitting any liability, claim, or defense, Plaintiff and Defendant
21 (collectively, the “Parties”) determined that it was mutually advantageous to settle this Action and
22 to avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

23 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on or
24 about [REDACTED], 2021, which provides for a complete dismissal, with prejudice, of the
25 claims asserted in the Action against Defendant on the terms and conditions set forth in the
26 Stipulation, subject to the approval of this Court;

27 NOW, therefore, the Court grants preliminary approval of the Settlement, and

28 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1 1. To the extent defined in the Joint Stipulation re: Class Action Settlement, attached
2 hereto as **Exhibit 1** and incorporated herein by reference, the terms in this Order shall have the
3 meanings set forth therein.

4 2. The Court has jurisdiction over the subject matter of this Action, Defendant, and the
5 Class.

6 3. The Class is defined as follows: “All persons who worked for defendant USP
7 Mission Hills, Inc. as non-exempt employees in the State of California at any time during the Class
8 Period.”

9 4. The Class Period is defined as March 18, 2016 to the earlier of December 31, 2021.

10 5. The Court has determined that the intended notice to be given to the Class fully and
11 accurately informs all persons in the Class of all material elements of the proposed Settlement,
12 constitutes the best notice practicable under the circumstances, and constitutes valid, due, and
13 sufficient notice to all Class Members.

14 6. The Court hereby grants preliminary approval of the Settlement and Stipulation as
15 fair, reasonable, and adequate in all respects to the Class Members and Orders the parties to
16 consummate the Settlement in accordance with the terms of the Stipulation.

17 7. The plan of distribution as set forth in the Stipulation providing for the distribution
18 of the Net Settlement Amount to Settlement Class Members is preliminarily approved as being fair,
19 reasonable, and adequate.

20 8. The Court preliminarily appoints as Class Counsel the following attorneys: William
21 B. Sullivan and Eric K. Yaeckel of Sullivan & Yaeckel Law Group, APC, 2330 Third Avenue, San
22 Diego, California 92101.

23 9. The Court preliminarily approves the payment of attorneys’ fees in the amount of \$
24 \$125,000.00 to Class Counsel, which shall be paid from, and not in addition to, the Total Class
25 Action Settlement Amount.

26 10. The Court preliminarily approves the payment of attorneys’ costs in the amount of
27 \$15,000 to Class Counsel, which shall be paid from, and not in addition to, the Total Class Action
28 Settlement Amount.

11. The Court preliminarily approves a payment in the amount of \$45,000.00 to the California Labor & Workforce Development Agency, representing the State of California's portion of civil penalties under PAGA, which shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

12. The Court preliminarily approves the payment of reasonable settlement administration costs to the Settlement Administrator, Phoenix Settlement Administrators, in the amount of \$6,750, which shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

13. The Court preliminarily approves an enhancement award to Plaintiff and class representative Tamara Whitmer the amount of \$5,000.00, which amount shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

14. This Preliminary Approval Order and the Stipulation, and all papers related thereto, are not, and shall not be construed to be, an admission by Defendant of any liability, claim, or wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim, or wrongdoing in this Action or in any other proceeding.

15. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Preliminary Approval Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation, and each party shall retain his or its rights to proceed with litigation of the Action.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: _____

Hon. David S. Cunningham
Los Angeles County Superior Court Judge