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LAW AND MOTION DEPT 53/54
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LANZELL SMITH, individually, and on behalf
of other members of the general public similarly
situated;

Plaintiff,

v.

AMERICAN CAMPUS COMMUNITIES
SERVICES, INC., a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 34-2020-00280934

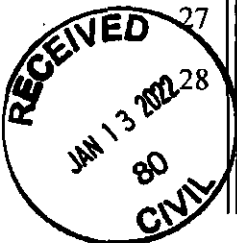
Honorable Shama H. Mesiwala
Department 53

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 12, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department 53

Complaint Filed: June 18, 2020
FAC Filed: August 4, 2021
Trial Date: None Set



1 The Court, having read the papers filed regarding Plaintiffs Lanzell Smith's and Rande
2 McCormick's ("Plaintiffs") Motion for Final Approval of a Class Action Settlement and receiving the
3 Attorney Fee Award, the Cost Award, and the Class Representative Enhancement Payments, and after
4 considering the papers submitted in support of the motion, including the Joint Stipulation and
5 Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS AND
6 ORDERS as follows:

7 This is a putative class action. Plaintiffs are former employees of Defendant American Campus
8 Communities Services, Inc. ("Defendant"). The operative complaint in the case asserts nine (9) causes
9 of action for wage-and-hour violations. Plaintiffs have brought this case on behalf of all current and
10 former non-exempt employees of Defendant in California during the Class Period ("Class" and "Class
11 Members"). The Class Period is time period from June 18, 2016, through August 6, 2021 ("Class
12 Period"). There are seven hundred seventy-seven (777) Class Members who did not submit a valid and
13 timely request to exclude themselves from the Settlement ("Participating Class Members").¹

14 On August 23, 2021, the Court granted Preliminary Approval of the Settlement. Plaintiffs now
15 move for Final Approval of the Settlement.

16 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
17 defined in the Settlement Agreement except as may otherwise be ordered.

18 The following Class is certified for purposes of settlement only: all current and former non-
19 exempt employees of Defendant in California during the time period from June 18, 2016, through
20 August 6, 2021.

21 Generally, "questions whether a settlement was fair and reasonable, whether notice to the class
22 was adequate, whether certification of the class was proper, and whether the attorney fee award was
23 proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*
24 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

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27 ¹ CPT Group sent out Notice Packets to seven hundred fifty-nine (759) Class Members and
28 received three (3) requests for exclusion. After the initial mailing, an individual was added as a
Class Member and was mailed a Notice Packet. Counsel subsequently discovered an additional 26
Class Members. Counsel gave all these individuals notice and personally corresponded or spoke
with 25 of them. Six of these individuals opted out. Consequently, there are seven hundred

1 In determining whether a class settlement is fair, adequate and reasonable, the
2 trial court should consider relevant factors, such as "the strength of plaintiffs'
3 case, the risk, expense, complexity and likely duration of further litigation, the
4 risk of maintaining class action status through trial, the amount offered in
5 settlement, the extent of discovery completed and the stage of the proceedings,
6 the experience and views of counsel, the presence of a governmental
7 participant, and the reaction of the class members to the proposed settlement.

8 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
9 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d
10 615, 624.)

11 "The list of factors is not exclusive and the court is free to engage in a balancing and weighing
12 of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.*, *supra*, 91
13 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent
14 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
15 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
16 reasonable and adequate to all concerned." (*Ibid.*, *quoting Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and
17 *Officers for Justice v. Civil Service Com'n, etc.*, *supra*, 688 F.2d at p. 625, internal quotation marks
18 omitted.)

19 The burden is on the proponent of the settlement to show that it is fair and
20 reasonable. However "a presumption of fairness exists where: (1) the
21 settlement is reached through arm's-length bargaining; (2) investigation and
22 discovery are sufficient to allow counsel and the court to act intelligently; (3)
23 counsel is experienced in similar litigation; and (4) the percentage of objectors
24 is small."

25 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, *citing Dunk*, *supra*, 48
26 Cal.App.4th at p. 1802.)

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1 Although [t]here is usually an initial presumption of fairness when a proposed
2 class settlement ... was negotiated at arm's length by counsel for the class, ...
3 it is clear that the court should not give rubber-stamp approval. Rather, to
4 protect the interests of absent class members, the court must independently and
5 objectively analyze the evidence and circumstances before it in order to
6 determine whether the settlement is in the best interests of those whose claims
7 will be extinguished. To make this determination, the factual record before the
8 ... court must be sufficiently developed... . The proposed settlement cannot be
9 judged without reference to the strength of plaintiffs' claims. The most
10 important factor is the strength of the case for plaintiffs on the merits, balanced
11 against the amount offered in settlement. The court must stop short of the
12 detailed and thorough investigation that it would undertake if it were actually
13 trying the case, but nonetheless it must eschew any rubber stamp approval in
14 favor of an independent evaluation.

15 (*Kullar, supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

16 Defendant will pay \$2,000,000, which includes: (1) the Administration Costs in an amount of
17 \$13,000; (2) the Private Attorney General Act ("PAGA") Payment in the amount of \$150,000,
18 seventy-five percent (75%) of which (\$112,500) shall be paid to the California Labor and Workforce
19 Development Agency ("LWDA") and twenty-five percent (25%) of which (\$37,500) shall be part of
20 the Net Settlement Amount distributed to the aggrieved employees eligible to recover the PAGA
21 Payment that consist of all current and former non-exempt employees who worked for Defendant
22 within the State of California between May 28, 2019, through August 6, 2021 ("Eligible Aggrieved
23 Employees," "PAGA Timeframe," and "PAGA Payment"), on a pro rata basis; (3) the Class
24 Representative Enhancement Payments in the sum of \$10,000 to each Plaintiff; (4) the Attorney Fee
25 Award in the sum \$760,000, which is thirty-eight percent (38%) of the Gross Settlement Amount, (5)
26 the Cost Award in the amount of \$13,615.72; and (6) Individual Settlement Shares payable to all
27 Participating Class Members. Class Members are not required to submit a claim form to receive their
28 Individual Settlement Shares. No portion of the Gross Settlement Amount will revert to Defendant.

Funding of the Settlement will be as follows:

No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
Defendant shall deposit the Gross Settlement Amount of \$2,000,000 needed to pay the entire Gross
Settlement Amount by wiring the funds to the Settlement Administrator. In the event there are
objectors to the Settlement, payment shall be made within twenty-one (21) calendar days after the time

1 to appeal has run or all appeals have been exhausted, whichever occurs later. Defendant shall also at
2 this time provide any tax information that the Settlement Administrator may need to calculate each
3 Participating Class Members' Individual Settlement Share, to the extent it is within Defendant's
4 possession. Afterwards, within fourteen (14) calendar days after the Funding of the Settlement, the
5 Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement,
6 including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class
7 Representative Enhancement Payments, the PAGA Payment, and the Administration Costs. The
8 Settlement Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment
9 to the LWDA for settlement of the PAGA claim.

10 As noted in the Preliminary Approval Order, the Settlement is entitled to a presumption of
11 fairness. In their moving papers, Plaintiffs contend that the Settlement was the product of arms-length
12 negotiations following extensive litigation and following extensive discovery and exchange of
13 documentation relating to the claims made by Plaintiffs. Moreover, the negotiations were facilitated
14 with the assistance of a skilled and experienced mediator, Lynn S. Frank, an experienced and well-
15 respected class action mediator.

16 With respect to the benefit to the Class Members, Plaintiffs' moving papers indicate that the
17 *average* Individual Settlement Share will be approximately \$1,378.31 under the proposed allocation,
18 which is based on the number of weeks worked during the Class Period.²

19 Participating Class Members must cash or deposit their Individual Settlement Share checks
20 within one hundred twenty (120) calendar days after the checks are mailed to them. If any checks are
21 not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement
22 Administrator will send a reminder postcard. If any checks remain uncashed or not deposited by the
23 expiration of the 30-day period after mailing the reminder notice, the Settlement Administrator will,
24 within one hundred fifty (150) calendar days after the checks are mailed, pay the amount of the
25 Individual Settlement Share to the California State Controller's Unclaimed Property Division in
26 accordance with California Unclaimed Property Law.

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² With the modifications discussed in footnote 1, the average is now approximately \$1,342.84.

1 The Plaintiffs have explained the risks and costs associated with continuing with the litigation
2 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiffs
3 have satisfactorily assessed the maximum value of the claims and of the reasonableness of the
4 discount accepted in the settlement considering these risks. Finally, the Declaration of the Settlement
5 Administrator, Tim Cunningham, states that the Notice of Class Action Settlement ("Class Notices")
6 and the Election Not To Participate or Opt-out Form ("Exclusion Form") (collectively, known as the
7 "Notice Packet") were mailed to seven hundred sixty (760) Class Members.. Counsel then provided
8 notice to an additional twenty-six (26). There were only nine (9) requests for exclusion from the
9 Settlement, and there were no objections to the Settlement. This is further proof of the fairness of the
10 Settlement. The Declaration of Douglas Han provides sufficient information about Class Counsel's
11 experience in litigating class action lawsuits.

12 The Court also has an independent right and responsibility to review the requested attorneys'
13 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
14 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney's fees requested by
15 Class Counsel in the sum of \$760,000 is thirty-eight percent (38%) of the common fund created for the
16 benefit of the Class Members and are supported by use of the percentage-fee method. (*See Laffitte v.*
17 *Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the Declaration of Douglas
18 Han, Class Counsel collectively expended 1,049.6 hours with a total lodestar figure of \$673,225.
19 Under the lodestar cross-check, the requested fee only results in a modest multiplier. Considering the
20 contingent nature of the representation and the ongoing monitoring of the settlement administration,
21 the requested hourly rates and the fee is justified. Accordingly, the Court finds that the fee request is
22 reasonable, and it is therefore approved.

23 The Court has also reviewed the Declaration of Douglas Han regarding the costs expended in
24 the prosecution of this litigation. Under the terms of the settlement, Plaintiffs may seek reimbursement
25 of up to \$25,000 in actual litigation costs. The Court finds that Plaintiffs have expended \$13,615.72 in
26 actual litigation costs and that such costs were reasonable. Accordingly, the Court approves the
27 payment of \$13,615.72 in costs from the settlement fund for the reimbursement of Class Counsel's
28 actual litigation costs.

1 The rationale for making the Class Representative Enhancement Payments is that the Class
2 Representatives should be compensated for the expense or risk they incurred in conferring a benefit on
3 other Class Members. Such enhancement payments are appropriate if they are necessary to induce
4 individuals to participate in the suit. The criteria courts may consider in determining whether to make
5 enhancement payments include: (1) the risk to the class representatives in commencing suit, both
6 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
7 representative; (3) the amount of time and effort spent by the class representative; (4) the duration of
8 the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives
9 because of the litigation.

10 The Court has reviewed Plaintiffs' declarations, which outline their involvement in the lawsuit.
11 Given the risks inherent in service as the Class Representatives, the duration of the case and time
12 involved, and the benefits created for the Class, the Court approves the Class Representative
13 Enhancement Payments in the amount of \$10,000 to each Plaintiff.

14 The Court has reviewed the Declaration of Tim Cunningham, the Case Manager for CPT
15 Group, Inc. ("CPT Group"), the Court-approved Settlement Administrator. The Court finds that notice
16 was provided to the Class pursuant to the preliminary approval order and that notice was sufficient and
17 that it satisfies due process. Thus, CPT Group has discharged its duties to provide notice to the Class
18 and approves a payment of \$13,000 for its services in administering this settlement, including the
19 mailing of settlement awards according to the terms of the Settlement Agreement.

20 As of the Effective Final Settlement Date, claims to be released by the Class Members include
21 any and all claims under state, or local law, whether statutory or common law arising out of the claims
22 pleaded in the First Amended Complaint and all other claims, such as those under the Labor Code,
23 Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the
24 facts pleaded in the First Amended Complaint for: (1) failure to pay regular and overtime wages under
25 state and federal law; (2) failing to maintain and provide accurate time records and wage statements;
26 (3) failure to pay minimum wage; (4) failure to timely pay final wages; (5) waiting time penalties; (6)
27 failure to provide or pay for meal breaks; (7) failure to provide or pay for rest periods; (8) failure to
28 pay sick pay at the regular rate of pay; (9) failure to reimburse business expenses; (10) statutory

1 penalties under PAGA; and (11) violation of California's unfair competition law. The release only
2 applies to periods of time when Class Members were members of the Class (*i.e.*, excluding periods of
3 time in an exempt position) ("Released Claims").

4 The Released Parties include Defendant and any of their present and former parent companies,
5 subsidiaries, divisions, concepts, related or affiliated companies, and any of those entities' respective
6 partners, shareholders, officers, directors, employees, agents, attorneys, insurers, successors, and
7 assigns, and any individual or entity that could be liable for any of the Released Claims in the First
8 Amended Complaint ("Released Parties").

9 Defendant makes no admission of liability or wrongdoing by virtue of entering the Agreement.
10 Additionally, Defendant reserves the right to contest any issues relating to class certification and
11 liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful
12 activity, has failed to comply with the law in any respect, has any liability to anyone under the claims
13 asserted in the Class Action, or that but for the Settlement, a Class should be certified in the Class
14 Action. The Agreement is entered solely for the purpose of compromising highly disputed claims.
15 Nothing in the Agreement is intended or will be construed as an admission by Defendant of liability or
16 wrongdoing. The Settlement and Plaintiffs' and Defendant's willingness to settle the Class Action will
17 have no bearing on, and will not be admissible in connection with, any litigation (other than solely in
18 connection with the Settlement).

19 The Agreement will be binding upon, and inure to the benefit of, the successors and assigns of
20 the Parties.

21 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement, the
22 Attorney Fee Award, the Cost Award, and the Class Representative Enhancement Payments is
23 GRANTED. Settlement Administrator is directed to carry out the terms of the Agreement forthwith.

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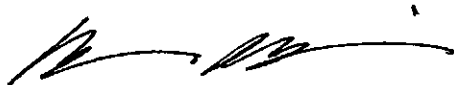
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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
2 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
3 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
4 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
5 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
6 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

7 IT IS SO ORDERED.

8
9 DATED: JAN 24 2022


HONORABLE SHAMA H. MESIWALA
SUPERIOR COURT JUDGE

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is mking@justicelawcorp.com.

On January 28, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Smith v. American Campus Communities Services, Inc.**
LWDA/Court Case No.: **LWDA-CM-791525-20**
34-2020-00280934
Sacramento County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 28, 2022, at Pasadena, California.



Madeline King