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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SARAH P. ESPINOZA,

Plaintiffs,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA; and DOES 1-100, Inclusive,

Defendants.

Case No. CIVDS2016481

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: June 13, 2022

Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

1 Plaintiffs’ motion for an order finally approving the Stipulation of Settlement of Class
2 Action and PAGA Action and Release of Claims (“Agreement”) and motion for an award of
3 attorneys’ fees, costs and service awards duly came on for hearing on June 13, 2022, before the
4 above-entitled Court. Zakay Law Group, APLC, JCL Law Firm, APC, and Mayall Hurley P.C.
5 appeared on behalf of Plaintiffs ESTEFANIA RENTERIA and SARAH P. ESPINOZA
6 (“Plaintiffs”). Dinsmore and Shohl LLP, appeared on behalf of Defendant LOVE’S COUNTRY
7 STORES OF CALIFORNIA (“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 terms used herein shall have the same meaning as defined in the
13 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. CIV-DS-
16 2016481, entitled *Espinoza v. Love’s Country Stores of California*, and over all Parties to this
17 litigation, including the Class.

18 **Preliminary Approval of the Settlement**

19 3. On November 16, 2021, the Court granted preliminary approval of a class-
20 wide settlement. At this same time the court approved certification of a provisional settlement
21 class for settlement purposes only. The Court confirms this Order and finally approves the
22 settlement and the certification of the Class.

23 **Notice to the Class**

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

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

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

3 6. After the Settlement Administrator mailed the original court-approved
4 Notice Packet on December 15, 2021, Class Counsel was advised that a number of individuals
5 who met the definition of the Class had been inadvertently left off. This Court approved the
6 mailing of an updated Notice Packet, which was mailed to the Class Members on March 14, 2022,
7 to their last known addresses.

8 7. The final deadline for opting out or objecting was April 28, 2022. There
9 was an adequate interval between notice and deadline to permit Class Members to choose what to
10 do and act on their decision. No Class Members objected. No Class Members requested
11 exclusion.

12 **Fairness of the Settlement**

13 8. The Gross Settlement Amount of \$2,219,318.18. The Agreement is entitled
14 to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

15 a. The settlement was reached through arms-length bargaining between
16 the parties. There is no evidence of any collusion between the parties in reaching the proposed
17 settlement.

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

20 c. Class Counsel for Plaintiffs, the Class Representative and the
21 Settlement Class Members are experienced in similar employment class action litigation and have
22 previously settled similar class claims on behalf of employees claiming compensation. Class
23 Counsel recommended approval of the Settlement.

24 d. The percentage of objectors and requests for exclusion is small. No
25 objections were received. No requests for exclusion were received.

26 e. The participation rate is high. All Class Members will be
27 participating in the Settlement and will be sent settlement payments.

1 9. The consideration to be given to the Class Members under the terms of the
2 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
3 claims asserted in this Action and is fair, reasonable, and adequate compensation for the release of
4 the Released Class Claims, given the uncertainties and risks of the litigation and the delays which
5 would ensue from continued prosecution of the Action.

6 10. The Agreement is finally approved as fair, adequate, and reasonable and in
7 the best interests of the Class Members.

8 **Attorneys' Fees and Litigation Expenses**

9 11. The Agreement provides for an award of up to 1/3 of the Gross Settlement
10 Amount (\$700,000) and up to \$30,000 for reimbursement of litigation expenses to Class Counsel
11 as the Class Counsel Award in this Action. Although the Agreement provides for the Class
12 Counsel Award not to exceed \$730,000, an increase in the number of Class Members was
13 discovered after this Court granted preliminary approval thereby increasing the Class Counsel
14 Award to \$769,772.72. On March 8, 2022, Class Counsel advised this Court of the increased
15 costs via an Ex Parte Application and provided notice to the Class Members of an increased Class
16 Counsel Award in a Revised Notice Packet, which was mailed to Class Members on March 14,
17 2022. Subject to the Court's approval, Class Counsel requests an award of \$769,772.72 in the
18 amount of \$739,772.72 for attorneys' fees and up to \$30,000 as reimbursement for litigation
19 expenses.

20 12. An award of \$769,772.72 consisting of \$739,772.72 for the Class Counsel
21 fees and up to \$30,000 for the Class Counsel litigation expenses payment is reasonable in light of
22 the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
23 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common
24 fund, which is reasonable and at the low end of the range for fee awards in common fund cases
25 and is supported by Class Counsel's lodestar.

26 **Class Representative Service Awards**

27 13. Subject to Court approval, the Agreement provides for Class Representative
28 Service Awards in the amount of \$10,000 for Plaintiff Renteria and \$10,000 for Plaintiff Espinoza

1 as the Class Representatives. The Court finds that the amount of \$10,000 for each Plaintiff is
2 reasonable in light of the work performed and, risks and burdens undertaken by the Plaintiffs in
3 this class action litigation.

4 **Settlement Administration Costs**

5 14. The Agreement provides for Settlement Administration Costs to be paid in
6 an amount not to exceed \$18,000. Although the Agreement provides for the Settlement
7 Administration Costs not to exceed \$18,000, an increase in the number of Class Members was
8 discovered after this Court granted preliminary approval thereby increasing the Settlement
9 Administration Costs to \$22,958.75. On March 8, 2022, Class Counsel advised this Court of the
10 increased costs via an Ex Parte Application and provided notice to the Class Members of an
11 increased Settlement Administration Costs in a Revised Notice Packet, which was mailed to Class
12 Members on March 14, 2022.

13 15. The Declaration of the Settlement Administrator provides that the actual
14 claims administration expenses were \$22,958.75. The amount of this payment is reasonable in
15 light of the work performed by the Settlement Administrator.

16 **II.**

17 **ORDERS**

18 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED,
19 ADJUDGED AND DECREED:

20 1. The Class is certified for the purposes of settlement only. The Class is
21 hereby defined to include:

22 All persons Defendant classified as non-exempt employees who are or previously
23 were employed by Defendant in California during the Class Period.

24 The Class Period means the period between May 15, 2019, through and including
25 May 25, 2021.

26 2. Every person in the Class who did not submit a timely and valid request for
27 exclusion is a Settlement Class Member.

1 3. After administering the Notice Packet, there are zero (0) opt-outs from the
2 Settlement.

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

6 5. Class Counsel are awarded a Class Counsel Award in the total amount of
7 \$769,722.72 comprised of attorneys' fees in the amount of \$739,772.72 and litigation expenses in
8 the amount of \$30,000. The Class Counsel Award shall be allocated thirty percent (30%) to the
9 JCL Law Firm, APC, thirty percent (30%) to the Zakay Law Group, APLC, and forty percent
10 (40%) to Mayall Hurley, P.C. Class Counsel shall not seek or obtain any other compensation or
11 reimbursement from Defendant, Plaintiffs, or members of the Class.

12 6. The payment of service awards to the Plaintiffs in the amount of \$10,000
13 for each Plaintiff is approved.

14 7. The payment of \$22,958.75 to the Settlement Administrator for Settlement
15 Administration Costs is approved.

16 8. The payment of \$60,000 to the California Labor and Workforce
17 Development Agency for the LWDA Payment is approved.

18 9. Final Judgment is hereby entered in this action. The Final Judgment shall
19 bind each Settlement Class Member. The Final Judgment shall operate as a full release and
20 discharge of Defendant from all class claims alleged in the operative complaint in the Renteria
21 Action and/or Espinoza Action which occurred during the Class Period, specifically including
22 claims for: (1) Failure to pay overtime wages; (2) Failure to pay minimum wages; (3) Failure to
23 provide required meal periods; (4) Failure to provide required rest periods; (5) Failure to provide
24 accurate itemized wage statements; and (6) Failure to provide wages when due; as well as any
25 federal, state or local provisions. To the extent employees are required to "opt-in" to have this
26 release be deemed effective under federal law, the acceptance and negotiation of any settlement
27 check shall be deemed effective for that purpose. The Released Class Claims expressly exclude
28 all other claims, including claims for vested benefits, wrongful termination, unemployment

1 insurance, disability, social security, workers' compensation, and class claims outside of the Class
2 Period.

3 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
4 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General
5 Act ("PAGA") and shall release Defendant from all of the PAGA claims alleged in the operative
6 complaint and Plaintiffs' PAGA notices to the LWDA in the Renteria Action and/or the Espinoza
7 Action, which occurred during the PAGA Period. Excluded from the PAGA Released Claims are
8 any claims under PAGA which were not and could not have been alleged based upon the facts set
9 forth in Plaintiff's Complaints and administrative exhaustion letter and expressly excluding all
10 other claims, including claims vested benefits, wrongful termination, unemployment insurance,
11 disability, social security, workers' compensation, and PAGA claims outside the PAGA Period.

12 The term "Aggrieved Employees" is hereby defined to include all non-exempt
13 employees who are or previously were employed by Defendant in California during the PAGA
14 Period. The PAGA Period means the period between April 6, 2019, through and including May
15 25, 2021.

16 11. In addition to the release given by each Settlement Class Member, Plaintiffs
17 also generally release Defendant from any and all of the Plaintiffs' Releases as defined in the
18 Agreement. This general release by Plaintiffs also includes a waiver of rights under California
19 Civil Code Section 1542.

20 12. The Agreement is not an admission by Defendant, nor is this Final
21 Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
22 wrongdoing by Defendant. Neither this Final Approval Order, the Settlement, nor any document
23 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may
24 be used as an admission by or against Defendant of any fault, wrongdoing, or liability whatsoever.
25 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
26 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
27 concession with regard to the denials or defenses by Defendant and shall not be offered in
28 evidence in any action or proceeding against Defendant in any court, administrative agency or

1 other tribunal for any purpose as an admission whatsoever other than to enforce the provisions of
2 this Final Approval Order and Judgment, the Settlement, or any related agreement or release.
3 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
4 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
5 records on file in the Action as evidence of the Settlement to support a defense of res judicata,
6 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
7 claims being released by the Settlement.

8 13. Notice of entry of this Final Approval Order and Judgment shall be given to
9 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send
10 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
11 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
12 indicated in the Notice Packet.

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

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

IT IS SO ORDERED AND ADJUDGED. LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY.

DATED: _____, 2022

Hon. David Cohn
Judge, Superior Court for the State of California,
County of San Bernardino

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