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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN LUIS OBISPO**

14 ANNA LEVINE, an individual, on behalf of
15 herself and on behalf of all persons similarly
16 situated,

17 Plaintiff,

18 vs.

19 ASSOCIATED STUDENTS
20 INCORPORATED OF CALIFORNIA
21 POLYTECHNIC STATE UNIVERSITY AT
22 SAN LUIS OBISPO, a California Corporation;
23 ASSOCIATED STUDENTS, INC., a
24 California Corporation; and DOES 1 through
25 50, inclusive,

26 Defendants.

CASE NO.: **20CV-0664**

(Assigned for all purposes to Judge Rita
Federman, Dept. 2)

[Consolidated with Case No. 20CV-0672]

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

Hearing Date: July 20, 2023

Hearing Time: 9:00 a.m.

Dept.: 2

Judge: Hon. Rita Federman

27 The unopposed motion of Plaintiff Anna Levine (“Plaintiff”) for an order finally approving
28 the Class and Representative Action Settlement Agreement (“Agreement”) with Defendant
Associated Students Incorporated of California Polytechnic State University at San Luis Obispo

FINAL APPROVAL ORDER AND JUDGMENT

1 (“Defendant”), attorneys’ fees and costs, service payment, and the expenses of the Settlement
2 Administrator duly came on for hearing on July 20, 2023 before the Honorable Rita Federman.

3 **I.**

4 **FINDINGS**

5 Based on the oral and written argument and evidence presented in connection with the
6 motion, the Court makes the following findings:

7 1. All terms used herein shall have the same meaning as defined in the Agreement.

8 2. This Court has jurisdiction over the subject matter of the Action pending before the
9 Superior Court for the State of California, in and for the County of San Luis Obispo, and over all
10 Parties to the Action, and all Class Members and Aggrieved Employees.

11 3. Based on a review of the papers submitted by Plaintiff and a review of the
12 applicable law, the Court finds that the Gross Settlement Amount of One Million Three Hundred
13 Fifty Thousand Dollars (\$1,350,000.00) and the terms set forth in the Agreement are fair,
14 reasonable, and adequate.

15 4. The Court further finds that the Settlement was the result of arm’s length
16 negotiations conducted after Class Counsel had adequately investigated the claims asserted in the
17 Action and became familiar with the strengths and weaknesses of those claims. In particular, the
18 amount of the Settlement, along with the assistance of an experienced mediator in the settlement
19 process, among other factors, support the Court’s conclusion that the Settlement is fair,
20 reasonable, and adequate.

21 **Preliminary Approval of the Settlement**

22 5. On February 14, 2023, the Court entered the Order granting preliminary approval
23 of the Settlement. At this same time, the Court approved conditional certification of the Class for
24 settlement purposes only.

25 **Notice to the Class**

26 6. Pursuant to the Preliminary Approval Order, the Court-approved Class Notice was
27 mailed by first class mail to members of the Class at their last-known addresses on or about March
28

1 21, 2023. Mailing of the Class Notice to their last-known addresses was the best notice
2 practicable under the circumstances and was reasonably calculated to communicate actual notice
3 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
4 Members fully and accurately informed the Class Members of all material elements of the
5 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
6 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
7 fully with the laws of the State of California, the United States Constitution, due process and other
8 applicable law. The Class Notice fairly and adequately described the Settlement and provided
9 Class Members adequate instructions and a variety of means to obtain additional information.

10 7. The deadline to submit requests for exclusions and written objections to the
11 Settlement was May 5, 2023. A full and fair opportunity has been afforded to all Class Members
12 to request exclusion from the Class, to object to the Settlement and to participate in the
13 preliminary and final approval of the Settlement, and all Class Members and other persons
14 wishing to be heard have had a full and fair opportunity to be heard. Class Members also have
15 had a full and fair opportunity to exclude themselves from the proposed Settlement and Class.
16 Accordingly, the Court determines that all Class Members who did not timely and properly submit
17 a request for exclusion are bound by the Settlement and this Final Approval Order and Judgment.

18 **Fairness of the Settlement**

19 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
20 (1996) 48 Cal.App.4th 1794, 1801.

21 a. The settlement was reached through arm's-length bargaining between the
22 Parties during an all-day mediation before Tripper Ortman, an experienced mediator of wage and
23 hour class actions. There has been no collusion between the Parties in reaching the Settlement.

24 b. Plaintiff's and Class Counsel's investigation and discovery have been
25 sufficient to allow the Court and Class Counsel to act reasonable and diligently on behalf of all
26 Class Members and Aggrieved Employees.

1 c. Counsel for all Parties are experienced in similar employment class and
2 representative action litigation. Plaintiff's counsel have recommended approval of the Agreement.

3 d. The percentage of objectors and requests for exclusion is small. Objections
4 from zero (0) Class Members were received and considered. Timely requests for exclusion were
5 received from zero (0) Class Members.

6 e. The participation rate in the Settlement will be high. In particular, 2,325
7 Participating Class Members will be mailed a Settlement Share, representing 100% of the overall
8 Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in the Action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, as detailed below, given the uncertainties and significant risks of the litigation
13 and the delays which would ensue from continued prosecution of the Action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members and Aggrieved Employees.

16 **Attorneys' Fees and Costs**

17 11. A Class Counsel's Fees Payment of \$450,000, representing one-third of the Gross
18 Settlement Amount, and a Class Counsel's Litigation Expenses Payment of \$17,845.91, are
19 reasonable in light of the contingent nature of Class Counsel's fee arrangement with Plaintiff, the
20 hours worked by Class Counsel, and the results achieved by Class Counsel. The requested
21 payments are supported by Class Counsel's lodestar and billing statements submitted to the Court.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 for Plaintiff, subject to the Court's approval. The Court finds that a Class
25 Representative Service Payment in the amount of \$10,000 to Plaintiff is reasonable in light of the
26 risks and burdens undertaken by Plaintiff in the Action, for her time and effort in bringing and
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1 prosecuting the Action on behalf of the Class and Aggrieved Employees, and for her execution of
2 a general release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall, among other things, calculate and administer
5 the payments to be made to the Class Members and Aggrieved Employees, transmit payment for
6 attorneys' fees and costs to Class Counsel, transmit the Class Representative Service Payment to
7 the Plaintiff, issue all required tax reporting forms, calculate withholdings and perform all other
8 duties set forth in the Agreement. Settlement Administration Expenses in the amount of \$30,500
9 are reasonable in light of the work already performed and to be performed by the Settlement
10 Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment in the amount of \$25,000.00,
13 which shall be allocated as follows: \$18,750.00 to the Labor & Workforce Development Agency
14 ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under the
15 Agreement pursuant to the PAGA and \$6,250.00 as the Aggrieved Employees' 25% share based
16 on the number of pay periods worked as Aggrieved Employees during the PAGA Period, which is
17 December 21, 2019 to August 15, 2022. Aggrieved Employees include all individuals, including
18 Plaintiff, who are or were employed by Defendant in California and who are or were classified by
19 Defendant as non-exempt employees during the PAGA Period. Pursuant to Labor Code section
20 2699, subdivision (1)(2), the LWDA was provided notice of the Agreement and these settlement
21 terms and has not indicated any objection thereto. The Court finds the PAGA Payment is
22 reasonable and adequate.

23 **II.**

24 **ORDERS**

25 Based on the foregoing findings, and for good cause appearing, IT IS HEREBY
26 ORDERED:

1 15. The Class is certified for the purposes of the Settlement only. The Class consists of
2 both the California Class and the FCRA Class, which are defined as follows:

3 The **California Class** is defined as: “all individuals who are or were employed by
4 Defendant in California and who are or were classified as non-exempt employees
5 during the California Class Period.” The “California Class Period” is December
6 21, 2016 to August 15, 2022.

7 The **FCRA Class** is defined as: “all employees and prospective employees of
8 Defendant in the United States on whom Defendant conducted a background check
9 during the FCRA Class Period.” The “FCRA Class Period” is December 21, 2015
10 to August 15, 2022.

11 16. All persons who meet the foregoing definition are members of the Class, except for
12 the Non-Participating Class Members who filed a valid and timely request for exclusion (“opt
13 out”) from the Class identified in the Declaration of the Settlement Administrator.

14 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
15 best interest of the Class.

16 18. Class Counsel are awarded a Class Counsel Fees Payment in the amount of
17 \$450,000 and a Class Counsel Litigation Expenses Payment in the amount of \$17,845.91. Class
18 Counsel shall not seek or obtain any other compensation or reimbursement from Defendant,
19 Plaintiff, Aggrieved Employees or Class Members.

20 19. A Class Representative Service Payment in the amount of \$10,000 to the Plaintiff
21 is approved.

22 20. The payment of \$30,500 to the Settlement Administrator for Settlement
23 Administration Expenses is approved.

24 21. A PAGA Payment of \$25,000.00 is approved and shall be distributed in accordance
25 with the Agreement.

26 22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall
27 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
28 entry.

 23. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this
Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any

1 wrongdoing by Defendant or that this Action is appropriate for class or representative treatment
2 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
3 Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement
4 is, may be construed as, or may be used as an admission by or against Defendant of any fault,
5 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
6 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
7 evidence of, an admission or concession with regard to the denials or defenses by Defendant.
8 Notwithstanding these restrictions, Defendant may file in any other proceeding this Final
9 Approval Order and Judgment, the Agreement, or any other papers and records on file in the
10 Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel,
11 release, or other theory of claim or issue preclusion or similar defense as to the California Class
12 Released Claims, the FCRA Class Released Claims, the PAGA Released Claims and/or the
13 Plaintiff's Released Claims.

14 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
15 Parties by Class Counsel on behalf of Plaintiff and all Class Members, the LWDA and all
16 Aggrieved Employees. The Final Approval Order and Judgment shall be posted on Class
17 Counsel's website as set forth in the Class Notice. It shall not be necessary to send notice of entry
18 of this Final Approval Order and Judgment to individual Class Members or Aggrieved Employees.

19 25. If the Agreement does not become final and effective in accordance with the terms
20 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
21 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
22 revert to their respective positions as of before entering into the Agreement, and expressly reserve
23 their respective rights regarding the prosecution and defense of this Action, including all available
24 defenses and affirmative defenses, and arguments that any claim in the Action could not be
25 certified as a class action and/or managed as a representative action.

26 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

27 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
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1 Plaintiff, all Class Members and Aggrieved Employees and the State of California, shall take
2 nothing in the Action.

3 27. The Court shall retain jurisdiction over the Action and the Parties to construe,
4 interpret, implement and enforce the Agreement, to hear and resolve any contested challenge to a
5 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
6 connection with the distribution of settlement benefits.

7 28. All Parties shall bear their own attorneys' fees and costs, except as otherwise
8 provided in the Agreement and in this Final Approval Order and Judgment.

9 29. California Class Released Claims and FCRA Class Released Claims. Upon the
10 Effective Date, Participating Class Members of the California Class, for the California Class
11 Period, shall be deemed to have forever released, acquitted, and discharged the Released Parties
12 from any and all demands, rights, liabilities, claims and/or causes of action that are alleged in the
13 Action or that could have been alleged based on the facts alleged in the Action or in the PAGA
14 Letter, including, all claims under California Labor Code sections 201-204, 210, 226(a), 226.7,
15 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, all claims for failure to pay
16 minimum wages, failure to pay overtime compensation, failure to provide required meal and rest
17 periods, failure to provide accurate itemized statements, failure to reimburse employees for
18 required business expenses, failure to provide wages when due, and claims under California
19 Business and Professions Code section 17200 ("California Class Released Claims"). Upon the
20 Effective Date, Participating Class Members of the FCRA Class, for the FCRA Class Period, shall
21 be deemed to have forever released, acquitted, and discharged the Released Parties from any and
22 all demands, rights, liabilities, claims and/or causes of action under FCRA that are alleged in the
23 Action or that could have been alleged based on the facts alleged in the Class Action, including,
24 all claims for failure to make proper disclosures and/or obtain proper authorization pursuant to 15
25 U.S.C., sections 1681, et seq., all claims for failure to make proper disclosures pursuant to
26 California Civil Code section 1786, et seq., and all claims for failure to obtain proper disclosures
27 pursuant to California Civil Code section 1785, et seq. ("FCRA Class Released Claims").
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1 30. PAGA Released Claims. Upon the Effective Date, Aggrieved Employees and the
2 State of California, for the PAGA Period, shall be deemed to have forever released, acquitted, and
3 discharged the Released Parties from any and all demands, rights, liabilities, claims and/or causes
4 of action that are alleged in the Action or that could have been alleged based on the facts alleged
5 in the Action or in the PAGA Letter, including, all PAGA claims based on alleged violations of
6 California Labor Code sections 201-204, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194,
7 1197, 1197.1, 1198, 2802, and all PAGA claims for failure to pay minimum wages, failure to pay
8 overtime compensation, failure to provide required meal and rest periods, failure to provide
9 accurate itemized statements, failure to reimburse employees for required business expenses, and
10 failure to provide wages when due (“PAGA Released Claims”).

11 31. Upon the Effective Date, and in addition to the releases above, Plaintiff, on her own
12 behalf and on behalf of her heirs, spouses, executors, administrators, attorneys, agents and assigns,
13 forever releases, acquits and discharges the Released Parties from all claims as set forth in the
14 Agreement (“Plaintiff’s Released Claims”) and to a waiver of all rights under California Civil
15 Code section 1542.

16 32. If the check representing a Settlement Share remains uncashed for 180 days after
17 they are mailed by the Settlement Administrator, the funds from such uncashed checks shall be
18 paid to the California State Controller’s Unclaimed Property Fund in the name of the Participating
19 Class Member where they may claim the funds as permitted by law.

20 33. The Court hereby enters Judgment in the Action as of the filing date of this Final
21 Approval Order and Judgment, pursuant to the terms set forth in the Settlement.

22
23 Dated: _____

24 _____
25 HON. RITA FEDERMAN
26 JUDGE OF THE SUPERIOR COURT
27
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