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on behalf of herself and all others similarly situated

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

MARY JEAN SMITH, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

NOIA RESIDENTIAL SERVICES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20CECG01820

CLASS ACTION

Assigned for All Purposes To:
Hon. Kimberly Gaab
Dept.: 503

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
APPROVING FORM OF NOTICE TO
THE CLASS, CERTIFYING THE
SETTLEMENT CLASS, AND SETTING
FINAL APPROVAL HEARING**

Hearing

Date: April 4, 2023
Time: 3:30 p.m.
Dept: 503

1 **RECITALS**

2 On May 31, 2022, Plaintiff Mary Jean Smith (the “Named Plaintiff”), individually and on
3 behalf of the Class, and Defendant NOIA Residential Services, Inc. (“Defendant”) entered into a
4 class action settlement, the terms and conditions of which are set forth in the parties’ Joint
5 Stipulation of Class Action Settlement (hereafter collectively, the “Settlement” or “Settlement
6 Agreement”). Unless otherwise provided in this Order, all capitalized terms shall have the same
7 meaning as set forth in the Settlement Agreement.

8 The motion of Named Plaintiff for an order preliminarily approving the settlement of this
9 action, approving the form of notice to the class, certifying the settlement class for settlement
10 purposes, and setting a final approval hearing came on for hearing in Department 503 of this Court
11 on _____, 2023.

12 This Court, having fully considered Plaintiff’s Motion, the Memorandum of Points and
13 Authorities in support, the Declarations in support, the Settlement Agreement, the proposed form of
14 Class Notice, and the oral argument presented to the Court, finds that: (1) the proposed settlement
15 appears fair, reasonable and adequate, and that a final hearing should be held after notice to the
16 Class (defined below) of the proposed settlement to determine if the Settlement Agreement and
17 settlement are fair, reasonable, and adequate such that a Final Order and Judgment should be entered
18 in these actions based upon the Settlement Agreement and (2) the PAGA Settlement Payment is fair
19 and adequate and the PAGA Settlement Payment should be approved.

20 **THE COURT ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:**

21 **ORDER PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND**
22 **APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

23 1. The Court finds that certification of the following class, for settlement purposes only,
24 is appropriate:

25 “all current and former non-exempt employees who worked for Defendant in
26 California at any time between June 24, 2016 and October 8, 2021.”

27 2. The Court grants preliminary approval of the terms and conditions contained in the
28 Settlement Agreement. The Court finds that the terms of the Settlement Agreement are within the

1 range of possible approval at the final approval hearing.

2 3. The Court preliminarily finds, for settlement purposes only, that the Class meets
3 (i) the ascertainability and numerosity requirements; (ii) the commonality requirement because, in
4 the absence of class certification and settlement, each individual Class Member would have to
5 litigate core common issues of law and fact, all relating to Defendant's alleged wage-and-hour
6 violations asserted in the action; (iii) the typicality requirement because the Named Plaintiff and the
7 Class Members' claims all arise from the same alleged events and course of conduct, and are based
8 on the same legal theories; and (iv) the adequacy of representation requirement because the Named
9 Plaintiff has the same interests as all members of the Class, and they are represented by experienced
10 and competent counsel.

11 4. The Court further finds, preliminarily and for settlement purposes only, that common
12 issues predominate over individual issues in this litigation and that class treatment is superior to the
13 other means of resolving this dispute. Employing the class device here will not only achieve
14 economies of scale for Class Members with individual claims, but also conserve the resources of
15 the judicial system and preserve public confidence in the integrity of the system by avoiding the
16 waste and delay of repetitive proceedings. In addition, certifying the class will prevent inconsistent
17 adjudications of similar issues and claims.

18 5. For settlement purposes only, the Court finds that the Named Plaintiff, Mary Jean
19 Smith, is an adequate representative and appoints her as such. The Court further finds that David
20 Yeremian of David Yeremian & Associates, Inc. and Emil Davtyan of Davtyan Law Firm, Inc. have
21 adequately represented the Named Plaintiff and the Class in this litigation, and the Court appoints
22 them as Class Counsel.

23 6. The Court appoints CPT Group, Inc. to perform the duties of a Settlement
24 Administrator for the purpose of issuing the Class Notice and administering the Settlement.

25 7. The Court recognizes that certification under this Order is for *settlement purposes*
26 *only*, and shall not constitute or be construed as a finding by the Court, or an admission on the part
27 of Defendant, that this action is appropriate for class treatment for litigation purposes. Entry of this
28 Order is without prejudice to the rights of Defendant to oppose class certification in the actions,

1 should the proposed Settlement Agreement not be granted final approval.

2 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

3 8. The Court has reviewed the Settlement Agreement and the proposed Class Notice to
4 the Settlement Agreement. The Court finds, on a preliminary basis, that the Settlement Agreement
5 appears to be within the range of reasonableness of a settlement that could ultimately be given final
6 approval by this Court. It appears to the Court on a preliminary basis that:

7 a. The settlement amount is fair and reasonable to all Class Members when
8 balanced against the probable outcome of further litigation relating to liability and damages issues;

9 b. Extensive and costly investigation and research have been conducted such
10 that counsel for the parties at this time are reasonably able to evaluate their respective positions;

11 c. Settlement at this time will avoid additional substantial costs, such as those
12 that have already been incurred by both parties, as well as avoid the delay and risks that would be
13 presented by the further prosecution of this litigation; and

14 d. The proposed settlement has been reached as the result of intensive, serious,
15 and non-collusive arm's-length negotiations.

16 9. The Court further approves the following representative group of employees as
17 governed by the Settlement Agreement with respect to the PAGA Claim:

18 "all current and former non-exempt employees who worked for Defendant in
19 California at any time between June 5, 2019 and October 8, 2021."

20 10. The Court grants approval of the PAGA Settlement Payment pursuant to the terms
21 and conditions contained in the Settlement Agreement. The Court finds that the terms of the PAGA
22 settlement are fair and reasonable and approves the PAGA settlement pursuant to Labor Code
23 § 2699(l)(2).

24 11. Because a PAGA action is not a class action, Class Members may not opt out of, or
25 object to, the PAGA Settlement Payment.

26 12. If the Court does not grant final approval of the Settlement Agreement, approval of
27 the PAGA settlement will be vacated.

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1 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

2 **AND TIMELINE FOR SENDING CLASS NOTICE**

3 13. This Court finds that the Class Notice fairly and adequately advises the potential
4 Class Members of the terms of the Settlement and the process for the Class Members to obtain the
5 benefits available under the Settlement Agreement, as well as the right of Class Members to opt out
6 of the class, to file documentation in opposition to the proposed settlement, and to appear at the
7 settlement hearing to be conducted on the date set by the Court. The Court further finds that the
8 Class Notice and proposed distribution of such Class Notice by first-class mail to each identified
9 Class Member at their last known address comports with all constitutional requirements, including
10 those of due process under the United States and California constitutions, and meets the
11 requirements of Code of Civil Procedure § 382 and California Rules of Court rule 3.766.
12 Accordingly, good cause appearing therefore, the Court hereby approves the proposed Class Notice.

13 14. The Settlement Administrator shall, as soon as practicable, but no later than
14 _____, 2023 [not less than 30 days following the date of this Order], cause the Class Notice
15 to be mailed by first class mail to all known members of the Class certified by this Court in this
16 action to the most recent address in Defendant's business records for each known member of the
17 Class. The mailing of the Class Notices directed in this Order constitutes the best notice practicable
18 under the circumstances and sufficient notice to all members of the Class.

19 15. The costs of settlement administration, including the cost of printing and mailing the
20 Class Notices shall be paid from the Settlement Amount. Such costs shall be withheld from the
21 Settlement Amount by the Settlement Administrator pursuant to the terms of the Settlement
22 Agreement.

23 16. Each member of the Class who wishes to be excluded from the Class must submit a
24 request to be excluded from the Settlement by the deadline set forth in the Class Notice. Any Class
25 Member who does not submit a timely request to be excluded from the Settlement consistent with
26 the terms of the Settlement Agreement shall be bound by the terms of the Settlement Agreement,
27 even if such Class Member has previously initiated or subsequently initiates individual litigation
28 against Defendant or other proceedings encompassed by the Settled Claims defined in the Settlement

1 Agreement.

2 **OBJECTIONS TO SETTLEMENT**

3 17. Any member of the Class who has not timely elected to be excluded from the Class,
4 and who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement
5 or the proposed settlement, or to the award of attorneys' fees and costs, shall provide to the
6 Settlement Administrator a written statement of the objection, as well as the specific reasons, if any,
7 for each objection. The Settlement Administrator will promptly transmit any objections it receives
8 to Class Counsel and Defendant's counsel.

9 18. All written objections must be signed by the Class Member or the Class Member's
10 representative and must include the information specified in the Class Notice.

11 19. A Class Member may appear either in person or through personal counsel at the Final
12 Hearing to object to the Settlement. If represented by personal counsel, the counsel will be hired at
13 the Class Member's expense.

14 20. Class Counsel and Defendant's counsel shall promptly furnish each other with copies
15 of any and all objections or written requests for exclusion that come into their possession.

16 **FINAL APPROVAL FAIRNESS HEARING**

17 21. The Court grants Plaintiff's motion to set a settlement hearing for final approval of
18 the Settlement Agreement on _____, 2023, at _____ in Department 503 of this Court
19 ("Final Hearing"), as set forth in the Class Notice, to determine whether the proposed settlement of
20 this action is fair, reasonable and adequate and should be finally approved. The Court will also
21 consider at the Final Hearing whether applications for Plaintiff's attorneys' fees and costs and
22 enhancement award to the Named Plaintiff should be granted and, if so, in what amounts.

23 22. Members of the Class who have not timely elected to be excluded from the Class and
24 who object to the proposed Settlement may appear and present such objections at the Settlement
25 Hearing in person or by counsel, provided that the objecting Class Member complied with the
26 requirements to object to the Settlement. No person shall be heard, and no briefs or papers shall be
27 received or considered, unless the requirements to object to the Settlement have been satisfied,
28 except as this Court may permit for good cause shown.

1 23. Class Counsel shall file Plaintiff's memorandum of points and authorities in support
2 of the final approval of the Settlement Agreement and his request for approval of the attorneys' fees,
3 litigation costs, and enhancement award no later than _____ days prior to the Final Hearing.
4 After the Final Hearing, the Court may enter a Final Order and Final Judgment in accordance with
5 the Settlement Agreement that will adjudicate the rights of all Class Members.

6 24. All discovery and other pretrial proceedings in this action are stayed and suspended
7 until further order of this Court, except such actions as may be necessary to implement the
8 Settlement Agreement and this Order.

9 25. If, for any reason, the Court does not grant final approval of the Settlement, all
10 evidence and proceedings held in connection therewith shall be without prejudice to the status quo
11 ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

12 **IT IS SO ORDERED.**

13
14 Dated: _____, 2023

JUDGE OF THE SUPERIOR COURT