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2021 MAY 26 PM 4:35

SACRAMENTO COURTS
DEPT. #34

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individually and on behalf of similarly situated employees

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

STEVE TRACY, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., a
California Corporation;
GEORGE GRINZEWITSCH, JR., an
individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00282778

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2560577

Date: May 25, 2021

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: August 4, 2020

FAC Filed: November 20, 2020

Trial Date: None Set

[PPSD] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on May 25, 2021 at 9:00 a.m., in Department 54 before
4 Hon. Christopher E. Krueger, presiding. Named Plaintiff Steve Tracy ("Plaintiff") filed this putative
5 class action on August 4, 2020. The operative Complaint alleges that Defendant Von Housen's
6 Sacramento, Inc., ("Defendant") failed to pay overtime, failed to pay minimum wages, failed to
7 provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed
8 to timely pay final wages, failed to reimburse expenses, engaged in unfair competition, violated Labor
9 Code section 558, failed to maintain accurate records, and failed to pay wages in a timely manner.
10 Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General
11 Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs as part of this
12 Action. Defendants denied all of Plaintiff's claims and denied that this case was appropriate for class
13 treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval of
19 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
20 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
21 FOLLOWS:

22 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 all non-exempt employees who have or continue to work for Defendant in
27 California from August 4, 2016 through the earlier of either June 15, 2021
28 or the Preliminary Approval Date.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
2 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

3 The Court finds that Class Members meet the ascertainability and numerosity requirements since
4 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
5 the definition and the number of Class Members would make joinder impractical. The commonality and
6 predominance requirements are met for settlement purposes since there are questions of law and fact
7 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
8 contentions that Defendants caused the alleged violations outlined above by 1) maintaining a
9 compensation system that failed to pay putative class members for all hours worked; 2) failing to pay
10 putative class members for non-selling time, such as time spent in meetings, trainings, and during rest
11 periods; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4)
12 failing to keep track of putative class members' hours worked; 5) failing to pay putative class members
13 overtime wages; and 6) failing to reimburse putative class members for the use of their personal
14 cellphones for work. The PAGA, waiting time penalty, wage statement violation, and unfair
15 competition claims also derive from these violations. Additionally, Class Members seek the same
16 remedies under state law. The typicality requirement for settlement purposes is also satisfied since the
17 claims of the Class Representative are based on the same facts and legal theories as those applicable to
18 the class members.

19 The Court also finds that preliminarily and conditionally certifying the settlement class is
20 required to avoid each Class Member from litigating similar claims individually. This settlement will
21 achieve economies of scale for Class Members with relatively small individual claims and conserve the
22 resources of the judicial system.

23 The Court finds that Plaintiff Steve Tracy and Plaintiff's counsel, Galen T. Shimoda and
24 Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of the settlement class.
25 The Court appoints them as class representative and class counsel, respectively.

26 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

27 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit

28 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of

1 a settlement, which could ultimately be given final approval by this Court. The Court also
2 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
3 Court or opt-out of being bound by the preliminarily approved Agreement.

4 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
5 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
6 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
7 \$750,000 Maximum Settlement Amount.

8 The Court orders that Plaintiff Steve Tracy will receive \$15,000 as a Class Representative
9 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
10 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

11 The Court orders and approves Simpluris, Inc. to act as the Settlement Administrator in this case.
12 The Settlement Administrator will take its fees out of the Maximum Settlement Amount, which are not
13 to exceed \$12,500. Any difference between the actual cost of the Settlement Administrator and the
14 approved payment will be redistributed to Settlement Class Members on a pro-rata basis.

15 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
16 because there is a sufficiently identifiable class of beneficiaries (*i.e.*, Class Members), the benefits can
17 be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
18 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
19 is a specific, lump-sum percentage of the Maximum Settlement Amount. *See Paul, Johnson, Alston &*
20 *Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977);
21 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees
22 request of thirty-five percent (35%) of the Maximum Settlement Amount, *i.e.*, \$262,500, to be
23 appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has
24 been approved by other Courts in similar cases and is reasonable in light of the circumstances of this
25 case, the substantial and beneficial results obtained on behalf of Class Members, and the contingent
26 nature of the recovery over the course of this case, which included potential loss at summary judgment,
27 certification, and/or trial proceedings. Additionally, the Court orders that up to \$17,500 of the
28 settlement proceeds will be paid to Class Counsel for reasonable costs incurred in this case. Any

1 difference between the actual costs incurred and the \$17,500 shall be paid to the Settlement Class
2 Members on a pro-rata basis.

3 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000) PAGA Payment,
4 which shall be paid from the Maximum Settlement Amount, not in addition to the Maximum Settlement
5 Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will
6 be paid to the Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%)
7 will be paid to Settlement Class Members on a pro rata basis as described in the Agreement. The Court
8 also finds that the Agreement provides a recovery that creates an effective substantial deterrent to any
9 potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

10 The Court approves of the residue distribution plan wherein any checks issued to Settlement
11 Class Members that are not cashed by the deadline to do so shall be tendered to the Controller of the
12 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section
13 1500, *et seq.*, for the benefit of the Settlement Class Members who did not cash their checks until such
14 time that they claim their property.

15 The releases and waivers for Class Members who do not timely opt out of being bound by the
16 Agreement (*i.e.*, Settlement Class Members) and the Class Representative are also approved by the
17 Court as set forth in the Agreement.

18 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
19 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

20 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
21 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
22 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
23 the Covered Period, their pro rata share of the Net Settlement Amount, how to participate in the
24 settlement, how to file documentation in opposition to the proposed settlement, and when to appear at
25 the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice
26 of Settlement and proposed distribution of such notice by first class mail to each identified Class
27 Member at his or her most recent address based on a National Change of Address database search from
28 the Class Members' last known address and a skip trace on any Class Members who have the Notice of

1 Settlement returned as "undeliverable" or "not at this address" comports with all constitutional
2 requirements, including those of due process.

3 The Court also finds that because there is a strong interest in providing Class Members the
4 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
5 privacy rights, the sharing of employment information, including social security numbers, is not a
6 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide the Class Data to
7 Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement
8 as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall
9 only use this information for settlement purposes identified herein, and this information shall be kept
10 confidential, not be shared with any third-party, and used only to administer the settlement. Any
11 information provided to Class Counsel to review during the settlement administration process will only
12 identify Class Members by employee number.

13 4. IMPLEMENTATION SCHEDULE

14 Accordingly, with good cause shown, the Court hereby approves and orders that the following
15 implementation schedule be adhered to:

16 Last day for Defendant to provide Settlement 17 Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
18 Last day for Settlement Administrator to 19 complete NCOA search, update Class Member 20 mailing information, and mail Notice of 21 Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
22 Last day for Class Members to opt-out, submit 23 disputes, submit objections, and submit data 24 requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
25 Last day for Settlement Administrator to provide 26 Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period

1 2 3 4	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payment, The LWDA's share of the PAGA Payment, Settlement Administrator Costs, and payment to Settlement Class Members.	Within seven (7) calendar days of the Settlement being fully funded
5 6	Last day for Settlement Class Members to cash settlement checks	120 days after issuance of checks to Settlement Class Members
7 8	Last day for Settlement Administrator to deliver value of uncashed settlement checks to the Controller of the State of California	Within 14 days after settlement check cashing deadline
9 10	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline
11 12	Last day for Defendant to provide Settlement Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
13 14 15 16	Last day for Settlement Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant

17 **FINAL APPROVAL AND HEARING**

18 The Court hereby grants Plaintiff's Motion and sets the final approval hearing on the proposed
19 date of September 16, 2021, at 9:00 a.m., with briefs and supporting documentation to be submitted
20 according to the California Code of Civil Procedure, in this Department. Class Members who object in
21 a timely manner, and in the manner set forth in the Agreement, may appear and present such objections
22 at the fairness hearing in person or by counsel.

23 If for any reason the Court does not grant final approval of the Agreement, all evidence and
24 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
25 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
26 purpose other than approving a settlement class. The parties will revert to their respective positions as if
27 no settlement had been reached at all.

28 //

1 **IT IS SO ORDERED.**

2
3 Date: 5-26-2021



Judge of the Superior Court

CHRISTOPHER E. KRUEGER

Tracy v. Von Housen's Sacrametno, Inc.
Sacramento County Superior Court of California 34-2020-00282778

**PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Rylee K. Fonseca, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On April 14, 2021, I served the following documents on the party below:

- [Proposed] Order Granting Plaintiff's Motion For Preliminary Approval Of Class Action And PAGA Settlement

Gregory C. Cheng (SBN: 226865) Heidi G. Kim (SBN: 306641) Ogletree, Deakins, Nash, Smoak & Stewart, P.C. One Embarcadero Center, Ste. 900 San Francisco, CA 94111 Telephone: (415) 536-3406 Facsimile: (415) 442-4870 Email: Gregory.cheng@ogletree.com Heidi.kim@ogletree.com	
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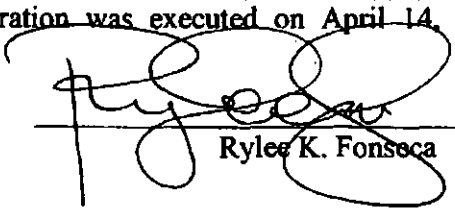
[XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2021 at Elk Grove, California


Rylee K. Fonseca

PROOF OF SERVICE