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SACRAMENTO COUNTY
DEPT. 54

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10 individually and on behalf of similarly situated employees

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

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

13 Plaintiff,

14 vs.

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

20 Defendants.

Case No. 34-2020-00282778

CLASS ACTION

CEL

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

Date: September 16, 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 FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND JUDGMENT



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on September 16, 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 civil penalties under the Labor Code Private Attorneys
11 General Act ("PAGA") based on these alleged violations. Plaintiff sought attorneys' fees and costs as
12 part of this Action. Defendants denied all of Plaintiff's claims and denied that this case was
13 appropriate for class treatment. No class has been certified. The class settlement was preliminarily
14 approved by this Court on May 26, 2021.

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

22 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
23 **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 May 26, 2021.

28 The Court recognizes that the foregoing definition is for Class Member identification purposes only and

1 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

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

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

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

24 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

25 The Court has reviewed the preliminarily approved Agreement, which was submitted with
26 Plaintiff's Motion as Exhibit A. The Court finds that the Agreement falls within the range of
27 reasonableness and is fair, reasonable, and adequate for the class. The Court also acknowledges that
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1 Class Members were able to object to the settlement through the administration process and at a fairness
2 hearing. No such objections were made and no class members opted out.

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

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

10 The Court orders and approves Simpluris, Inc. to act as the Settlement Administrator in this case.
11 The Settlement Administrator will take its fees out of the Maximum Settlement Amount, which are
12 \$9,890. The difference between the actual cost of the Settlement Administrator and the originally
13 allocated payment will be redistributed to Settlement Class Members on a pro-rata basis.

14 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
15 because there is a sufficiently identifiable class of beneficiaries (*i.e.*, Class Members), the benefits can
16 be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
17 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
18 is a specific, lump-sum percentage of the Maximum Settlement Amount. *See Paul, Johnson, Alston &*
19 *Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977);
20 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees
21 request of thirty-five percent (35%) of the Maximum Settlement Amount, *i.e.*, \$262,500, to be
22 appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has
23 been approved by other Courts in similar cases and is reasonable in light of the circumstances of this
24 case, the substantial and beneficial results obtained on behalf of Class Members, and the contingent
25 nature of the recovery over the course of this case, which included potential loss at summary judgment,
26 certification, and/or trial proceedings. Additionally, the Court orders that \$13,306.35 of the settlement
27 proceeds will be paid to Class Counsel for reasonable costs incurred in this case. The difference
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1 between the actual costs incurred and the originally allocated \$17,500 shall be paid to the Settlement
2 Class Members on a pro-rata basis.

3 The Court approves the Ten Thousand Dollars and No Cents (\$10,000) PAGA Payment, which
4 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 Notice of Settlement, which was submitted with Plaintiff's Motion as
21 Exhibit A to the Declaration of Meagan Brunner, fairly and adequately advised Class Members of the
22 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
23 of workweeks worked during the Covered Period, their pro rata share of the Net Settlement Amount,
24 how to participate in the settlement, how to file documentation in opposition to the proposed settlement,
25 and when to appear at the fairness hearing to be conducted on the date set forth below. The Court
26 further finds that the Notice of Settlement and distribution of such notice by first class mail to each
27 identified Class Member at his or her most recent address based on a National Change of Address
28 database search from the Class Members' last known address and a skip trace on any Class Members

1 who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with
2 all constitutional requirements, including those of due process.

3 **4. IMPLEMENTATION SCHEDULE**

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

6 7 8 9	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
10 11	Last day for Settlement Class Members to cash settlement checks	120 days after issuance of checks to Settlement Class Members
12 13 14	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
15 16	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline
17 18	Last day for Defendant to provide Settlement Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
19 20 21	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

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1 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
2 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
3 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
4 Agreement.

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7 IT IS SO ORDERED.

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9 Date: 9-16-2021



10 Judge of the Superior Court
11 CHRISTOPHER E. KRUEGER
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Tracy v. Von Housen's Sacramento, 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, Erika F. Collazo, 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 September 16, 2021, I served the following documents on the party below:

- Order Granting Plaintiff's Motion for Final Approval of Class Action and
PAGA Settlement and Judgment

Gregory C. Cheng (SBN: 226865) Carolyn B. Hall (SBN 212311) Ogletree, Deakins, Nash, Smoak & Stewart, P.C. One Embarcadero Center, Ste. 900 San Francisco, CA 94111 Telephone: (415) 442-4810 Facsimile: (415) 442-4870 Email: Gregory.cheng@ogletree.com carolyn.hall@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.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct, and that this declaration was executed on September 16, 2021 at Elk Grove,
3 California.

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