

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 14 2022

BY


JESSICA MORALES, DEPUTY

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

Julieann Alvarado (State Bar #334727)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiffs

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

**[REPOSED] ORDER AND JUDGMENT
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 Action
2 and PAGA Action and Release of Claims ("Agreement") and motion for an award of attorneys'
3 fees, costs and service awards duly came on for hearing on June 13, 2022, before the above-entitled
4 Court. Zakay Law Group, APLC, JCL Law Firm, APC, and Mayall Hurley P.C. appeared on behalf
5 of Plaintiffs ESTEFANIA RENTERIA and SARAH P. ESPINOZA ("Plaintiffs"). Dinsmore and
6 Shohl LLP, appeared on behalf of Defendant LOVE'S COUNTRY STORES OF CALIFORNIA
7 ("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 class
21 for settlement purposes only. The Court confirms this Order and finally approves the settlement
22 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 notice
27 practicable under the circumstances and was reasonably calculated to communicate actual notice of
28 the litigation and the proposed settlement to the members of the Class Members. The Court finds

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

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

8 7. The final deadline for opting out or objecting was April 28, 2022. There was
9 an adequate interval between notice and deadline to permit Class Members to choose what to do
10 and act on their decision. No Class Members objected. Only one (1) Class Member, Shaun Ference,
11 requested 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 allow
19 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. One request for exclusion was received.

26 e. The participation rate is high. Approximately 99.94% of Class
27 Members will be participating in the Settlement and will be sent settlement payments.

28

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 claims
3 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
4 Released Class Claims, given the uncertainties and risks of the litigation and the delays which would
5 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 a Class Counsel Award of \$769,772.73 comprised
10 of one-third (1/3) of the Gross Settlement Amount (\$739,722.73) and up to \$30,000 for
11 reimbursement of litigation expenses. Class Counsel expended a total of \$27,318.47 in actual
12 litigation expenses in this Action. Subject to the Court's approval, Class Counsel requests a Class
13 Counsel Award of **\$767,041.20** for attorneys' fees and \$27,318.47 as reimbursement for litigation
14 expenses.

15 12. An award of \$767,041.20 consisting of \$739,772.72 for the Class Counsel
16 fees and \$27,318.47 for the Class Counsel litigation expenses payment is reasonable in light of the
17 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
18 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common fund,
19 which is reasonable and at the low end of the range for fee awards in common fund cases and is
20 supported by Class Counsel's lodestar.

21 **Class Representative Service Awards**

22 13. Subject to Court approval, the Agreement provides for Class Representative
23 Service Awards in the amount of \$10,000 for Plaintiff Renteria and \$10,000 for Plaintiff Espinoza
24 as the Class Representatives. The Court finds that the amount of \$10,000 for each Plaintiff is
25 reasonable in light of the work performed and, risks and burdens undertaken by the Plaintiffs in this
26 class action litigation.

27 ///

28 ///

1 **Settlement Administration Costs**

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

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

13 **II.**

14 **ORDERS**

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

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

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

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

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

25 3. After administering the Notice Packet, there is only one (1) opt-out from the
26 Settlement. The name of the person who opted-out is Shaun Ference.

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

4 5. Class Counsel are awarded a Class Counsel Award in the total amount of
5 \$767,041.20 comprised of attorneys' fees in the amount of \$739,772.72 and litigation expenses in
6 the amount of \$27,318.47. The Class Counsel Award shall be allocated thirty percent (30%) to the
7 JCL Law Firm, APC, thirty percent (30%) to the Zakay Law Group, APLC, and forty percent (40%)
8 to Mayall Hurley, P.C. Class Counsel shall not seek or obtain any other compensation or
9 reimbursement from Defendant, Plaintiffs, or members of the Class.

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

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

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

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

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

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

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

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

1 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
2 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
3 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
4 or issue preclusion or similar defense as to the claims being released by the Settlement.

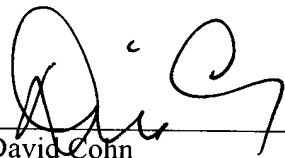
5 13. Notice of entry of this Final Approval Order and Judgment shall be given to
6 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send notice
7 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
8 Approval Order and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

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

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

18
19 **IT IS SO ORDERED AND ADJUDGED. LET JUDGMENT BE FORTHWITH**
20 **ENTERED ACCORDINGLY.**

21 DATED: 10/14, 2022
22

23
24 
25 Hon. David Conn
26 Judge, Superior Court for the State of California,
27 County of San Bernardino
28

4861-9962-3188.1 / 110067-1001