

DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com

LAUREN R. DAVIS (SBN 294115)
lauren@spivaklaw.com

THE SPIVAK LAW FIRM

8605 Santa Monica Bl

PMB 42554

West Hollywood, CA 90069

Telephone: (213) 725-9094

Facsimile: (213) 634-2485

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

OCT - 9 2024

BY Jessica Garcez
JESSICA GARCEZ, DEPUTY

Attorneys for Plaintiff(s),
NICOLE SHAVER, and all others similarly situated
(Additional attorneys for Plaintiff(s) on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)**

NICOLE SHAVER, on behalf of herself, all
others similarly situated, and the general public,
and as an "aggrieved employee" on behalf of
other "aggrieved employees" under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

G AND C SWAN, INC., a California
corporation; and DOES 1-50, inclusive,

Defendant(s).

Case No.: CIVSB2103630

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Hearing Information

Action filed: February 17, 2021
Hearing Date: October 9, 2024
Hearing Time: 1:30 p.m.
Hearing Dept: S-17, The Honorable
Joseph T. Ortiz



SPIVAK LAW

Employee Rights Attorneys

Mail
West Hollywood CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
Spivaklaw.com

Office
1801 Century Park East
25th Fl
Los Angeles CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)

walter@uelglaw.com

UNITED EMPLOYEES LAW GROUP

8605 Santa Monica Bl.

PMB 63354

West Hollywood, CA 90069

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),

NICOLE SHAVER, and all others similarly situated



SPIVAK LAW

Employee Rights Attorneys

Mail

West Hollywood CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

Spivaklaw.com

Office

1801 Century Park East

25th Fl

Los Angeles CA 90067

1 This matter came on for hearing on October 9, 2024 at 1:30 p.m. in Department S-17 of
2 the above-captioned court on Plaintiff's Motion for Final Approval of a Class Action Settlement
3 pursuant to California Rules of Court, Rule 3.769, as set forth in the Class Action and PAGA
4 Settlement Agreement and Class Notice (the "Settlement") filed herewith which provides for a
5 Gross Settlement Amount ("GSA") of \$650,000.00 in compromise of all disputed claims on
6 behalf of current and former hourly, non-exempt employees and interns employed by Defendant
7 G and C Swan, Inc. ("Defendant") who worked in California during the Class Period. All
8 capitalized terms used herein shall have the same meaning as defined in the Settlement.

9 In accordance with the Court's prior ruling granting Preliminary Approval of Class
10 Action Settlement, Class Members have been given notice of the terms of the Settlement and
11 the opportunity to request exclusion, comment upon, or object to it or to any of its terms. Having
12 received and considered the Settlement, the supporting papers filed by the Parties, and the
13 evidence and argument received by the Court in conjunction with the motions for preliminary
14 and final approval of the Settlement, the Court grants final approval of the Settlement and
15 HEREBY ORDERS, ADJUDGES, DECREES, AND MAKES THE FOLLOWING
16 DETERMINATIONS:

17 1. The Court has jurisdiction over the subject matter of the Action and over all
18 Parties to the Action, including all Class Members who did not request to be excluded from the
19 Settlement. Pursuant to this Court's ruling granting the Motion for Preliminary Approval of
20 Class Action Settlement of June 17, 2024, the Class Notice was sent to each Class Member by
21 First Class U.S. mail. The Class Notice informed Class Members of the terms of the Settlement,
22 their right to receive their proportional share of the Settlement, their right to request exclusion,
23 their right to comment upon or object to the Settlement, and their right to appear in person or by
24 counsel at the final approval hearing and be heard regarding final approval of the Settlement.
25 Adequate periods of time were provided by each of these procedures. No member of the Class
26 presented written objections to the proposed Settlement as part of this notice process, stated an
27 intention to appear, or actually appeared at the final approval hearing.

28 2. For purposes of this Settlement, "Class Member" or "Settlement Class Member"

1 means all of Defendant's hourly, non-exempt California employees and interns during the Class
2 Period.

3 3. The Court finds and determines that the notice procedure afforded adequate
4 protections to Class Members and provides the basis for the Court to make an informed decision
5 regarding final approval of the Settlement based on the responses of Class Members. The Court
6 finds and determines that the notice provided in this case was the best notice practicable, which
7 satisfied the requirements of law and due process as to all persons entitled to such notice.

8 4. **Release by Plaintiff and Class Members.** Effective on the date when Defendant
9 fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on
10 the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel
11 will release claims against all Released Parties as follows:

12 Plaintiff's Release: Plaintiff and her respective former and present spouses,
13 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
14 release and discharge Released Parties from all claims, transactions, or occurrences that
15 occurred during the Class Period, including, but not limited to: (a) all claims that were, or
16 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint
17 and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts
18 contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the
19 Action and released under paragraph 6.2 of the Settlement ("Plaintiff's Release"). Plaintiff's
20 Release does not extend to any claims or actions to enforce the Settlement, or to any claims for
21 vested benefits, unemployment benefits, disability benefits, social security benefits, or workers'
22 compensation benefits that arose at any time, or based on occurrences outside the Class Period.
23 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
24 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
25 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different
26 or additional facts or Plaintiff's discovery of them. Settlement, ¶ 6.1.

27 Plaintiff's Waiver of Rights Under California Civil Code Section 1542: For purposes of
28 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and



SPIVAK LAW

Employee Rights Attorneys

Mail:
West Hollywood CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
Spivaklaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles CA 90067

1 benefits, if any, of section 1542 of the California Civil Code, which reads:

2 **A general release does not extend to claims that the creditor or**
3 **releasing party does not know or suspect to exist in his or her**
4 **favor at the time of executing the release, and that if known by**
5 **him or her would have materially affected his or her settlement**
6 **with the debtor or Released Party.**

7 Settlement, ¶ 6.1.1.

8 Release by Participating Class Members Who Are Not Aggrieved Employees: All
9 Participating Class Members, on behalf of themselves and their respective former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
11 Released Parties from all claims stated in the Operative Complaint and those based solely upon
12 the facts alleged in the Operative Complaint. Except as set forth in Section 6.3 of the Settlement,
13 Participating Class Members do not release any other claims, including claims for vested
14 benefits, wrongful termination, violation of the Fair Employment and Housing Act,
15 unemployment insurance, disability, social security, workers' compensation, or claims based on
16 facts occurring outside the Class Period. Settlement, ¶ 6.2.

17 Release of PAGA Claim: Plaintiff releases all claims for civil penalties that could have
18 been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing
19 letter to the California Labor & Workforce Development Agency ("LWDA"). Plaintiff does not
20 release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved
21 Employee is a Participating Class Member. Settlement, ¶ 6.3.

22 5. The Court further finds and determines that the terms of the Settlement are fair,
23 reasonable, and adequate, that the Settlement is ordered finally approved, and that all terms and
24 provisions of the Settlement, including the release of claims contained therein, should be and
25 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
26 according to its terms. As of the Effective Date of Settlement, and for the duration of the Class
27 Period, all Class Members are hereby deemed to have waived and released all Released Claims
28 and are forever barred and enjoined from prosecuting the Released Claims against the Releasees
as fully set forth in the Settlement. No objections were received by the Parties or the Court



SPIVAK LAW
Employee Rights Attorneys

Mail
West Hollywood CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office
1801 Century Park East
25th Fl
Los Angeles CA 90067

1 through the date of this Final Order and Judgment. The Court finds that no Class Members
2 submitted a request for exclusion from the Settlement as determined by the Administrator.

3 6. The Court finds and determines that (a) the Individual Class Payment to be paid
4 to Participating Class Members and (b) the \$3,000.00 payment to the LWDA for the PAGA
5 penalty under the California Labor Code Private Attorneys General Act of 2004, as amended,
6 California Labor Code sections 2699 *et seq.*, as provided for by the Settlement are fair and
7 reasonable. The Court hereby grants final approval to, and orders the payment of, those amounts
8 be made to the Participating Class Members and to the California Labor & Workforce
9 Development Agency, in accordance with the terms of the Settlement.

10 7. The Court further grants final approval to and orders that the following payments
11 be made in accordance with the terms of the Settlement:

12 a. A Class Counsel Fees Payment in the amount of \$216,666.64 for
13 attorneys' fees and a Class Counsel Litigation Expenses Payment in the amount of \$37,345.99
14 to Class Counsel;

15 b. \$20,000.00 as a Class Representative Service Payment payable to
16 Plaintiff Nicole Shaver for her service as the class representative;

17 c. \$6,250.00 as an Administration Expenses Payment payable to
18 Administrator for its services as the Administrator;

19 d. Payment of \$3,000.00 (75% of the \$4,000.00 PAGA Penalty) to the
20 LWDA; and

21 e. Employer-side payroll taxes (to be paid in addition to the Gross
22 Settlement Amount by Defendant).

23 8. The settlement administration shall proceed as directed in the Settlement, and no
24 payments pursuant to the Settlement shall be distributed until after the Effective Date. Without
25 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
26 of all matters relating to the interpretation, administration, implementation, effectuation, and
27 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule
28 of Court 3.769(h).

9. Within 30 calendar days of the Effective Date, Defendant shall deposit the Settlement proceeds in an account designated by the Administrator: (i) the total amount of all Individual Class Payments to Participating Class Members, (ii) the Court-approved Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (iii) the Court-approved Class Representative Service Payment, (iv) the Court-approved Administration Expenses Payment, and (v) the payment to the LWDA. Defendant shall also pay its share of the employer-side payroll taxes in addition to the GSA.

10. Defendant's payment of such sums shall be the sole financial obligation of Defendant under the Settlement, and shall be in full satisfaction of all claims released herein, including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs, and expenses.

11. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Individual Class Payment and/or Individual PAGA Payment checks. After the expiration of the 180-day period, on Defendant's behalf, the Settlement Administrator shall remit any amounts from voided and otherwise unclaimed Settlement checks (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of the initial judgment to the California Unclaimed Property Fund.

12. The Parties shall file a final accounting report by Aug. 1, 2025. A ~~nonappearance~~ case review regarding submission of a final report is scheduled for Aug. 7, 2025 at 8:30 a.m. in Department S-17.

13. Nothing in this Final Order and Judgment shall preclude any action to enforce the Parties' obligations under the Settlement or hereunder, including the requirement that Defendant deposits funds for distribution by the Administrator to participating Class Members in accordance with the Settlement.

14. The Court hereby enters final Judgment in this case in accordance with the terms of the Settlement, Order Granting Motion for Preliminary Approval of Class Action Settlement, and this Final Order and Judgment.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

19
20

21

22

23



25

25

26

20

27