

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

DEC 29 2021

BY


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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

RAKESH RAY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

C&W FACILITY SERVICES, INC.,
Massachusetts corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2101321

[Assigned for all purposes to the Hon. David Cohn,
Department S-26]

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

Date: December 29, 2021
Time: 10:00 A.M.
Dept.: S-26

Complaint Filed: January 28, 2021
FAC Filed: April 22, 2021
SAC Filed: October 1, 2021

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

1 Plaintiff's application for an Order Granting Preliminary Approval of Class Action
2 Settlement was filed with the Court on December 6, 2021, and a hearing was held before this
3 Court on December 29, 2021.

4 The Court has considered the Joint Stipulation of Class Action Settlement and Release
5 ("Settlement Agreement") and all other papers filed in this action.

6 NOW THEREFORE, IT IS HEREBY ORDERED:

7 1. This Court grants preliminary approval of the Settlement Agreement between
8 Plaintiff and Defendant filed herewith. The Joint Stipulation of Class Action Settlement and
9 Release ("Settlement Agreement") appears to be fair, adequate, and reasonable to the Class;

10 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through
11 their counsel of record in the Litigation, have reached an agreement to settle all claims in the
12 Litigation on behalf of the Class (as defined below and in the Settlement Agreement) as a whole;

13 3. The Court hereby conditionally certifies the following Class for settlement
14 purposes only:

15 All current and former employees of Defendant in the State of
16 California who received wages at any time between January 12,
17 2020, through February 14, 2021 and received paper copy wage
statements.

18 Should for whatever reason the Settlement Agreement not become Final, the fact that the
19 Parties were willing to stipulate to certification of a class as part of the Settlement Agreement
20 shall have no bearing on, or be admissible in connection with, the Litigation or the issue of
21 whether a class should be certified in a non-settlement context.

22 4. The Court appoints and designates: (a) Plaintiff Rakesh Ray as the Class
23 Representative and (b) Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity
24 Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel for the Class.
25 Class Counsel is authorized to act on behalf of the Class with respect to all acts or consents
26 required by, or which may be given, pursuant to the Settlement Agreement, and such other acts
27 reasonably necessary to finalize the Settlement Agreement and its terms. Any Class Member
28 may enter an appearance through his or her own counsel at such Class Member's own expense.

1 Any Class Member who does not enter an appearance or appear on his or her own behalf will be
2 represented by Class Counsel.

3 5. The Court hereby approves the terms and conditions provided for in the
4 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
5 falls within the range of reasonableness of a settlement, including the amount of the PAGA
6 penalties, and appears to be presumptively valid, subject only to any objections that may be
7 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
8 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class
9 Members when balanced against the probable outcome of further litigation relating to liability
10 and damages issues. It also appears that investigation, research, and court proceedings have been
11 conducted so that counsel for the Settling Parties are able to reasonably evaluate their respective
12 positions. It appears to the Court that settlement at this time will avoid substantial additional
13 costs by all Settling Parties, as well as avoid the delay and risks that would be presented by the
14 further prosecution of the Litigation. It also appears that settlement has been reached as a result
15 of intensive, serious, and non-collusive arm's-length negotiations.

16 6. A final fairness hearing on the question of whether the proposed Settlement
17 Agreement, the allocation of payments to Participating Class Members, attorneys' fees and costs
18 to Class Counsel, payment of PAGA penalties to the Labor Workforce & Development Agency,
19 and the Class Representative Enhancement Payment should be finally approved as fair,
20 reasonable, and adequate as to the members of the Class is hereby set for

21 _____ at _____ in this Court.

22 7. The Court hereby approves, as to form and content, the Notice of Class Action
23 Settlement ("Notice Packet") to be sent to Class Members, which is attached as **Exhibit A** to the
24 Settlement Agreement. The Court finds that distribution of the Notice Packet substantially in the
25 manner and form set forth in the Settlement Agreement and this Order meets the requirements of
26 due process and shall constitute due and sufficient notice to all parties entitled thereto.

27 8. The Court appoints and designates Phoenix Settlement Administration as the
28 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the

1 approved Notice Packet to Class Members using the procedures set forth in the Settlement
2 Agreement.

3 9. Any Class Member may choose to opt out of and be excluded from the settlement
4 as provided in the Settlement Agreement and Notice Packet and by following the instructions for
5 requesting exclusion. Any person who timely and properly opts out of the settlement will not be
6 bound by the Settlement Agreement, except as to the release of claims for civil penalties under
7 the PAGA. *ZB, N.A. v. Superior Ct.*, 8 Cal. 5th 175, 196 (2019) ("Nonparty employees are bound
8 by the judgment in an action under the PAGA"). Further, any person who timely and properly
9 opts out of the settlement will not have any right to object, appeal, or comment thereon. Any Opt
10 Out request must be in writing and signed by each such Class Member opting out and must
11 otherwise comply with the requirements delineated in the Notice Packet. Class Members who
12 have not requested exclusion by submitting a valid and timely Opt Out request, by the Opt Out
13 deadline, shall be bound by all determinations of the Court, the Settlement Agreement, and
14 Judgment.

15 10. Any Class Member may object to the Settlement Agreement or express his or her
16 views regarding the Settlement Agreement and may present evidence and file briefs or other
17 papers that may be proper and relevant to the issues to be heard and determined by the Court as
18 provided in the Class Notice.

19 11. The Motion for Final Approval shall be filed by the Class Representative no later
20 than sixteen (16) court days before the Settlement Fairness Hearing.

21 12. The Court reserves the right to adjourn or continue the date of the Settlement
22 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
23 the Class, and retains jurisdiction to consider all further applications arising out of or connected
24 with the Settlement Agreement.

25 IT IS SO ORDERED.

26
27 DATED: 12/29/21

28 
HON. DAVID COHN
SUPERIOR COURT OF CALIFORNIA