

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 NORMAN B. BLUMENTHAL (SB# 068687)

4 Norm@bamlawca.com

5 KYLE R. NORDREHAUG (SB# 205975)

6 kyle@bamlawca.com

7 APARAJIT BHOWMIK (SB# 248066)

8 AJ@bamlawca.com

9 2255 Calle Clara

10 La Jolla, CA 92037

11 Telephone: 1(858) 551-1223

12 Facsimile: 1(858) 551-1232

13 Attorneys for Plaintiff

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF ALAMEDA

16 RAYMOND HUERTA, an individual, on
17 behalf of himself and on behalf of all persons
18 similarly situated,

19 Plaintiffs,

20 v.

21 SPLAY, INC., a California Corporation; and
22 DOES 1 through 50, inclusive,

23 Defendants.

CASE NO.: **RG21102661**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: July 12, 2022

Hearing Time: 3:00 p.m.

Judge: Hon. Brad Seligman

Dept.: 23

Action Filed: June 23, 2021

Trial Date: None Set

1 This matter, having come before the Honorable Brad Seligman of the Superior Court of the
2 State of California, in and for the County Alameda, on July 12, 2022, for the motion by Plaintiff
3 Raymond Huerta ("Plaintiff") for preliminary approval of the class settlement with Defendant
4 Splay, Inc. ("Defendant"). The Court, having considered the briefs, argument of counsel and all
5 matters presented to the Court and good cause appearing, hereby GRANTS Plaintiff's Motion for
6 Preliminary Approval of Class Action Settlement.

7
8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action Settlement Agreement
10 ("Agreement") attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
11 Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This is based on the
12 Court's determination that the Settlement set forth in the Agreement is within the range of possible
13 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
14 and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is One Million Seven Hundred Thousand Dollars
18 (\$1,700,000). It appears to the Court on a preliminary basis that the settlement amount and terms
19 are fair, adequate and reasonable as to all potential Class Members when balanced against the
20 probable outcome of further litigation and the significant risks relating to certification, liability and
21 damages issues. It further appears that investigation and research have been conducted such that
22 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
23 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
24 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
25 It further appears that the Settlement has been reached as the result of serious and non-collusive,
26 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,

1 adequate, and reasonable when balanced against the probable outcome of further litigation and the
2 significant risks relating to certification, liability, and damages issues.

3 4. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$20,000, and
5 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
6 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
7 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
8 supporting these requests, including lodestar, prior to final approval.

9 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
10 certification of a class for settlement purposes only. This stipulation will not be deemed
11 admissible in this or any other proceeding should this Settlement not become final. For settlement
12 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
13 previously were employed by Defendant in California who were classified as non-exempt
14 employees at any time during the Class Period, and who have previously not released their
15 claims." The Class Period is June 23, 2017 through April 6, 2022.

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
22 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
23 action is superior to other available methods for the efficient resolution of this controversy; and (f)
24 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
25 representative of the Class.

26 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
28

1 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

2 8. The Court hereby approves, as to form and content, the Notice of Proposed
3 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
4 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
5 accurately inform the Class of all material elements of the proposed Settlement, of the Class
6 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
7 member’s right and opportunity to object to the Settlement. The Court further finds that the
8 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
9 and this Order meets the requirements of due process, is the best notice practicable under the
10 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
11 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
12 the Agreement.

13 9. The Court hereby appoints ILYM Group as Settlement Administrator. No later
14 than fourteen (14) calendar days after preliminary approval of the Settlement by the Court,
15 Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
16 Administrator will perform address updates and verifications as necessary prior to the mailing of
17 the Class Notice. Using best efforts to mail it as soon as possible, and in no event later than 14
18 days after receiving the Class information spreadsheet, the Settlement Administrator will mail the
19 Class Notice to all Class Members via first-class U.S. Mail.

20 10. The Court hereby preliminarily approves the proposed procedure for exclusion
21 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
22 from the Class as provided in the Class Notice by following the instructions for requesting
23 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
24 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
25 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
26 response date for requests for exclusion will be extended an additional 15 days. Any such person
27 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
28

1 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
2 comment thereon. Class Members who have not requested exclusion shall be bound by all
3 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only
4 opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass
5 of individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of
6 the Settlement, those Aggrieved Employees that worked during the PAGA Period of June 23,
7 2020 through April 6, 2022, will still be paid their allocation of the PAGA Payment and the Labor
8 Workforce Development Agency will remain bound by the release of the Released PAGA Claims
9 in the Agreement regardless of any request for exclusion.

10 11. Any Class Member who has not opted out may appear at the final approval hearing
11 and may object or express the Member's views regarding the Settlement, and may present
12 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
13 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
14 calendar days from the date of the mailing of the Class Notices to submit their written objections
15 to the Settlement Administrator in accordance with the instructions in the Class Notice. If the
16 Class Notice Packet is re-mailed, the response date for written objections will be extended an
17 additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to
18 make an oral objection.

19 12. A Final Approval Hearing shall be held before this Court on _____
20 _____ at _____ in Department 23 at the Alameda County Superior Court to
21 determine all necessary matters concerning the Settlement, including: whether the proposed
22 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
23 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
24 Order and Judgment should be entered herein; whether the plan of allocation contained in the
25 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
26 finally approve attorneys' fees and costs, the service award, and the expenses of the Settlement
27 Administrator. All papers in support of the motion for final approval and the motion for attorneys'
28

1 fees, costs and service award, both to be heard at the Final Approval Hearing, shall be filed with
2 the Court and served on all counsel no later than sixteen (16) court days before the hearing.

3 13. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 14. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as of before entering into the Agreement,
19 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
24 the Agreement with respect to the effect of the Agreement if it is not approved.

25 15. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing and all dates provided for in the Agreement without further notice to Class Members, and
27
28

1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

6

7 Dated: _____

8 HON. BRAD SELIGMAN
9 JUDGE, SUPERIOR COURT OF CALIFORNIA

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28