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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: **RG21102661**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: December 13, 2022
Hearing Time: 3:00 p.m.

Judge: Hon. Brad Seligman
Dept.: 23

Action Filed: June 23, 2021
Trial Date: None Set

1 The motion of Plaintiff Raymond Huerta (“Plaintiff”) for an order finally approving the
2 Class Action Settlement Agreement (“Agreement”) with Defendant Splay, Inc. (“Defendant”),
3 attorneys’ fees and costs, service payment, and the fees and expenses of the Settlement
4 Administrator duly came on for hearing on December 13, 2022 before the Honorable Brad
5 Seligman.

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7 **I.**
8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of Alameda, and over all Parties to this litigation,
14 including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiffs and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of One Million Seven Hundred
17 Thousand Dollars (\$1,700,000) and the terms set forth in the Agreement are fair, reasonable, and
18 adequate.
- 19 4. The Court further finds that the Settlement was the result of arm’s length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

- 26 5. On August 9, 2022, the Court granted preliminary approval of the Settlement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes

1 only.

2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
4 by first class mail to members of the Class at their last known addresses on or about September 22,
5 2022. Mailing of the Class Notice to their last known addresses was the best notice option under
6 the circumstances and was reasonably calculated to communicate actual notice of the litigation
7 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
8 accurately informed the Class Members of all material elements of the proposed Settlement and of
9 their opportunity to object to or comment thereon or to seek exclusion from the Settlement; was
10 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the
11 State of California, the United States Constitution, due process and other applicable law. The
12 Class Notice fairly and adequately described the Settlement and provided Class Members adequate
13 instructions and a variety of means to obtain additional information.

14 7. The deadline for opting out of the Class or submitting written objections to the
15 Settlement was November 7, 2022. There was an adequate interval between notice and the
16 deadline to permit Class Members to choose what to do and act on their decision. A full
17 opportunity has been afforded to the Class Members to participate in this hearing, and all Class
18 Members and other persons wishing to be heard have been heard. Class Members also have had a
19 full and fair opportunity to exclude themselves from the proposed Settlement and Class.
20 Accordingly, the Court determines that all Class Members who did not timely and properly submit
21 a request for exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 parties during an all-day mediation before Louis Marlin, a respected and experienced mediator of
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1 wage and hour class actions. There has been no collusion between the parties in reaching the
2 proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both Parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. One (1) request for exclusion was received.

9 e. The participation rate was high. 680 Participating Class Members will be
10 mailed a settlement payment, representing 99.85% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$510,000 for attorneys' fees, representing one-third of the Gross
20 Settlement Amount, and \$11,725.76 for litigation costs and expenses, is reasonable, in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar.

23 **Class Representative Service Payment**

24 12. The Agreement provides for a Class Representative Service Payment of not more
25 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that Class
26 Representative Service Payment in the amount of \$10,000 to the Plaintiffs is reasonable in light of
27 the risks and burdens undertaken by the Plaintiff in the litigation, for his time and effort in
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1 bringing and prosecuting this matter on behalf of the Class, and for his execution of a general
2 release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payment to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
7 issue any required tax reporting forms, calculate withholdings and perform the other remaining
8 duties set forth in the Agreement. The Settlement Administrator has documented \$15,990 in fees
9 and expenses, and this amount is reasonable in light of the work performed by the Settlement
10 Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$50,000, which shall be allocated \$37,500 to the LWDA as the LWDA's 75% share of
14 the settlement of civil penalties paid pursuant to the PAGA and \$12,500 to be distributed to the
15 Aggrieved Employees based on their respective pay periods during the PAGA Period. The
16 Aggrieved Employees are all individuals who are or previously were employed by Defendant in
17 California who were classified as non-exempt employees at any time during the PAGA Period,
18 and who have previously not released their claims, which is June 23, 2020 through April 6, 2022.
19 The Court finds this PAGA Payment to be reasonable. All Aggrieved Employees will be sent
20 their share of the PAGA Payment and the Labor Workforce Development Agency will be subject
21 to the release of the Released PAGA Claims as set forth below, whether or not anyone opts out of
22 the Settlement.

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24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
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1 1. The certification of the Class for the purposes of settlement is confirmed. The
2 Class is defined as follows:

3 All individuals who are or previously were employed by Defendant in California
4 who were classified as non-exempt employees at any time during the Class Period,
and who have previously not released their claims

5 The Class Period is June 23, 2017 through March 24, 2022.

6 2. All persons who meet the foregoing definition are members of the Class, except for
7 those individuals who filed a valid request for exclusion (“opt out”) from the Class. The
8 individual who requested exclusion is David Lara.

9 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
10 best interest of the Class.

11 4. Class Counsel are awarded attorneys' fees in the amount of \$510,000 and costs in
12 the amount of \$11,725.76. Ten percent (10%) of any fee award shall be kept in the Settlement
13 Administrator's trust fund until the completion of the distribution process and Court approval of a
14 final accounting. Class Counsel shall not seek or obtain any other compensation or reimbursement
15 from Defendant, Plaintiff or members of the Class.

16 5. The payment of the Class Representative Service Payments in the amount of
17 \$10,000 to the Plaintiff is approved.

18 6. The payment of \$15,990 to the Settlement Administrator for their fees and
19 expenses is approved.

20 7. The PAGA Payment of \$50,000 is approved and shall be distributed in accordance
21 with the Agreement.

22 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
23 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
24 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
25 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
26 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
27 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
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1 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
2 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
3 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
4 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
5 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
6 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
7 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
8 Released PAGA Claims.

9 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
10 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
11 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
12 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
13 to individual Class Members.

14 10. If the Agreement does not become final and effective in accordance with the terms
15 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
16 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
17 revert to their respective positions as of before entering into the Agreement, and expressly reserve
18 their respective rights regarding the prosecution and defense of this Action, including all available
19 defenses and affirmative defenses, and arguments that any claim in the Action could not be
20 certified as a class action and/or managed as a representative action.

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22 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

23 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
24 Plaintiffs, and all members of the Class, shall take nothing in the Action.

25 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
26 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
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1 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
2 arising from or in connection with the distribution of settlement benefits.

3 3. The Parties are authorized to agree to and to adopt such amendments, modifications
4 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
5 Final Approval Order and Judgment and as approved by the Court.

6 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
7 provided in the Agreement and in this Final Approval Order and Judgment.

8 5. Upon the Effective Date and upon full funding of the Gross Settlement Amount,
9 each Class Member who has not validly opted out has released the "Released Class Claims"
10 against the Defendant as set forth in the Agreement. "Released Class Claims" means all class
11 claims that were pled in the operative complaint in the Action or could have been plead based on
12 the factual allegations contained in the operative complaint in the Action that occurred during the
13 Class Period, which includes the following claims based upon the facts alleged in the operative
14 complaint in the Action that occurred during the Class Period: (i) all claims for unpaid overtime;
15 (ii) all claims for meal and rest break violations; (iii) all claims for unpaid wages, including
16 minimum wages; (iv) all claims for failure to timely pay wages upon termination; (v) all claims
17 for the failure to reimburse necessary business expenses; (vi) all claims for failure to timely pay
18 wages during employment; (vii) all claims for wage statement violations; (viii) all claims asserted
19 through California Business & Professions Code sections 17200, et seq., and expressly excluding
20 all other claims, including claims for wrongful termination, vested benefits, unemployment
21 insurance, disability, social security, and workers' compensation, and claims outside of the Class
22 Period.

23 6. Upon the Effective Date and upon full funding of the Gross Settlement Amount,
24 Defendant shall receive a release from the State of California of all PAGA claims that were pled in
25 the operative complaint in the Action, in the notice letter to the LWDA, or could have been plead
26 based on the factual allegations contained in the operative complaint in the Action and/or in the
27 LWDA Notice submitted by Plaintiff which occurred during the PAGA Period ("Released PAGA
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1 Claims”). Release PAGA Claims include PAGA claims predicated on alleged violations of Labor
2 Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
3 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
4 and California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating). The
5 Released PAGA Claims may be released against all Released Parties. The Released PAGA
6 Claims exclude any PAGA claims outside the PAGA Period. The release of the Released PAGA
7 Claims shall be effective regardless of whether an Aggrieved Employee submitted a request for an
8 exclusion from the Class. The Released PAGA Claims do not include all other claims, including
9 claims for wrongful termination, vested benefits, social security, discrimination, unemployment
10 insurance, disability and worker’s compensation, and claims outside of the PAGA Period..

11 7. As of the Effective Date, Plaintiff generally releases and discharges the Released
12 Parties from any and all claims, known or unknown, asserted and unasserted, which Plaintiff has
13 or may have against the Released Parties as set forth fully in the Agreement.

14 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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16 Dated: _____

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18 HON. BRAD SELIGMAN
19 JUDGE, SUPERIOR COURT OF CALIFORNIA
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