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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

SANTIAGO GUTIERREZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

M.M.C.L., INC. dba CALIFORNIA
LANDCARE, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. 30-2021-01182371-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Randall J. Sherman, Dept. CX105]*

**[PROPOSED] JUDGMENT AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES AND
COSTS, AND CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Date: June 2, 2023
Time: 10:00 a.m.
Dept.: CX105

Action Filed: February 2, 2021
Trial Date: None Set

1 **[PROPOSED] JUDGMENT AND ORDER**

2 Plaintiff Santiago Gutierrez’s Motion for Final Approval of Class Action Settlement,
3 Attorneys’ Fees and Costs, and Class Representative Enhancement Payment came on regularly
4 for hearing before this Court on June 2, 2023, at 10:00 a.m., pursuant to California Rule of Court
5 3.769 and this Court’s Order Granting Preliminary Approval of Class Action Settlement
6 (“Preliminary Approval Order”) (ROA#80). Having considered the Stipulation of Settlement,
7 attached as Exhibit A to the July 7, 2022 Declaration of Matthew K. Moen (ROA#44) and the
8 Amendment to the Stipulation of Settlement, attached as Exhibit 1 to the January 9, 2023
9 Declaration of Matthew K. Moen (ROA#66) (collectively, the “Settlement” or “Settlement
10 Agreement”), Plaintiff’s Motion for Final Approval of Class Action Settlement, and all other
11 documents and evidence presented in support thereof, and recognizing the sharply disputed
12 factual and legal issues involved in this case, the risks of further prosecution, and the benefits to
13 be received by the Settlement Class members pursuant to the Settlement, the Court hereby makes
14 a final ruling that the proposed Settlement is fair, reasonable, and adequate, and is the product of
15 good faith, arms’-length negotiations between the parties. Good cause appearing therefor, the
16 Court hereby GRANTS Plaintiff’s Motion for Final Approval of Class Action Settlement and
17 HEREBY ORDERS THE FOLLOWING:

18 1. Final judgment is hereby entered in conformity with the Settlement and this
19 Court’s Preliminary Approval Order.

20 2. The conditional class certification contained in the Preliminary Approval Order is
21 hereby made final, and the Court thus certifies, for purposes of the Settlement, the Settlement
22 Class defined as:

23 All current and former non-exempt employees who worked for Defendant
24 M.M.C.L., Inc. dba California Landcare (“Defendant”) in California at any
25 time between February 2, 2017 and October 31, 2021 (the “Class Period”)
26 and who did not sign a “Release Agreement” with Defendant in connection
27 with its *Chindarah v. Pick Up Stix, Inc.* campaign.
28

1 3. Plaintiff Santiago Gutierrez is hereby confirmed as the Class Representative and
2 Fletcher W. Schmidt, Paul K. Haines, Matthew K. Moen, and Susan J. Perez of Haines Law
3 Group, APC are hereby confirmed as Class Counsel.

4 4. Notice was provided to the Settlement Class members as set forth in the Settlement
5 Agreement, which was approved by the Court on January 27, 2023 (ROA#80), and the notice
6 process has been completed in conformity with the Court's Orders. The Court finds that said
7 notice constituted reasonable notice under the circumstances, and constituted valid, due, and
8 sufficient notice to all Settlement Class members. The Notice of Class Action Settlement provided
9 due and adequate notice of the proceedings and matters set forth therein, informed Settlement
10 Class members of their rights, and fully satisfied the requirements of California Code of Civil
11 Procedure § 382, California Rules of Court 3.766 and 3.769, the California and United States
12 Constitutions, and other applicable law.

13 5. The Court finds that no Class Member objected to the Settlement and zero
14 individuals requested to be excluded from the Settlement, resulting in a 100% participation rate.
15 The Court determines that this response supports final approval.

16 6. The Court hereby approves the Settlement as set forth in the Settlement Agreement
17 as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement
18 according to its terms.

19 7. For purposes of settlement only, the Court finds that: (a) the Settlement Class
20 members are ascertainable and so numerous that joinder of all members is impracticable; (b) there
21 are questions of law or fact common to the Settlement Class members, and there is a well-defined
22 community of interest among Settlement Class members with respect to the subject matter of the
23 litigation; (c) the claims of the Class Representative are typical of the claims of the Settlement
24 Class members; (d) the Class Representative has fairly and adequately protected the interests of
25 the Settlement Class members; (e) a class action is superior to other available methods for an
26 efficient adjudication of this controversy; and (f) Class Counsel is qualified to serve as counsel
27 for the Class Representative and the Settlement Class members.

1 8. The Court finds that given the absence of objections, and objections being a
2 prerequisite to appeal, this Order shall be considered final as of the Effective Date (which is
3 defined in the Settlement Agreement as the date which the Court signs an order granting final
4 approval of the Settlement).

5 9. As of the date that this Judgment becomes final, all Settlement Class members
6 release and discharge Defendant and its former or present parents, subsidiaries, affiliates,
7 predecessors or successors, agents, employees, officers, directors, and attorneys (collectively, the
8 “Released Parties”) from all claims, demands, rights, liabilities and causes of action that were
9 pled in the operative First Amended Complaint in the Action, or which could have been pled in
10 the operative First Amended Complaint based on the factual allegations therein, including claims
11 for failure to pay overtime and minimum wages, meal period violations, rest period violations,
12 failure to reimburse all necessary business expenses, wage statement penalties, waiting time
13 penalties, and failure to comply with California’s Unfair Competition laws, that arose during the
14 Class Period (“Released Claims”). This release shall run from February 2, 2017 until October 31,
15 2021.

16 10. As of the date that this Judgment becomes final, all Settlement Class members
17 who worked for Defendant at any time between February 2, 2020 through October 31, 2021 (the
18 “PAGA Period”) shall be deemed to have released and discharged Defendant from all PAGA
19 claims that are based on the Labor Code violations pled in the operative First Amended Complaint
20 in the Action or Plaintiff’s letter to the California Labor and Workforce Development Agency
21 dated February 2, 2021, or which could have been pled in the operative First Amended Complaint
22 in the Action based on the factual allegations therein, that arose during the PAGA Period (the
23 “PAGA Released Claims”). This release shall run from February 2, 2020 through October 31,
24 2021.

25 11. The Court orders Defendant to deposit the entire Maximum Settlement Amount of
26 \$1,250,000.00 with Simpluris, Inc. (the “Settlement Administrator”) within 60 calendar days of
27 the date of this Order.
28

1 12. The Court finds that the payment to the State of California Labor and Workforce
2 Development Agency (“LWDA”) in the amount of \$30,000.00 for its 75% share of the civil
3 penalties allocated under the PAGA is fair, reasonable, and adequate, and orders the Settlement
4 Administrator to distribute this payment in conformity with the terms of the Settlement.

5 13. The Court finds that the Class Representative Enhancement Payment in the
6 amount of \$5,000.00 is appropriate in recognition of the risks Plaintiff undertook; for the amount
7 of time and effort spent by Plaintiff as the Class Representative; and the service Plaintiff provided
8 to the Settlement Class members. The Court finds that this amount is fair, reasonable, and
9 adequate, and orders that the Settlement Administrator make this payment in conformity with the
10 terms of the Settlement.

11 14. The Court finds that attorneys’ fees in the total amount of \$416,666.67 and
12 litigation costs of \$9,398.81 for Class Counsel are fair, reasonable, and adequate. The Court
13 orders the Settlement Administrator to distribute these payments to Class Counsel in conformity
14 with the terms of the Settlement.

15 15. The Court orders that the Settlement Administrator shall be paid \$5,795.00 from
16 the Maximum Settlement Amount for all of its work done and to be done until the completion of
17 this matter and finds that sum appropriate.

18 16. The Court finds that the Individual Settlement Payments, as provided for in the
19 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
20 distribute these payments in conformity with the terms of the Settlement.

21 17. Pursuant to California Rule of Court 3.771(b), the Court orders that notice of this
22 Judgment be posted on a website hosted by the Settlement Administrator and the URL to be
23 provided to Settlement Class Members with their Individual Settlement Payments.

24 18. Any funds from Individual Settlement Payment checks remaining uncashed after
25 the 180-day check-cashing deadline will be distributed to Girls Inc. of Orange County, a 501(c)(3)
26 *cy pres* dedicated to child advocacy in Orange County.

27 19. This document shall constitute a final judgment pursuant to California Rule of
28 Court 3.769(h) which provides, “If the court approves the settlement agreement after the final

1 approval hearing, the court must make and enter judgment. The judgment must include a
2 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
3 judgment. The court may not enter an order dismissing the action at the same time as, or after,
4 entry of judgment." The Court will retain jurisdiction to enforce the Settlement, the Final
5 Approval Order, and this Judgment, pursuant to California Rule of Court 3.769(h) and California
6 Code of Civil Procedure § 664.6.

7 20. Pursuant to California Rule of Court, Rule 3.771(b) and the Parties' Settlement
8 Agreement, the Settlement Administrator is Ordered to post notice of this Final Judgment and
9 Order on its website for the Settlement Class members and aggrieved employees.

10 21. Plaintiff will submit to the Court a final report in the form of a declaration from
11 the Settlement Administrator on or before March 8, 2024, setting forth the total amount that was
12 paid to Settlement Class members, the number and amount of any uncashed checks, confirming
13 that distribution efforts are fully completed, including the distribution of uncashed class member
14 checks the *cy pres*, that the Settlement Administrator's work is complete, and that the court's file
15 thus may be closed. Plaintiff must also submit an Amended Judgment stating how much money
16 is being paid to the *cy pres*, including any interest that accrued on the funds, and, if known, the
17 purpose of the distribution to the *cy pres* and how it plans to expend the funds. The Court will
18 hold a non-appearance case review on March 22, 2024 at 10:00 a.m., to review the report and the
19 Amended Judgment and determine if any further reports or hearings are necessary.

20 **IT IS SO ORDERED.**

21 Dated: _____, 2023

Honorable Randall J. Sherman
Judge of the Superior Court