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individually and on behalf of similarly situated employees

FILED

SEP 09 2022

Clk of the Court
Superior Court of California
County of Calaveras

By _____ Deputy

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF CALAVERAS**

10
11 RAYMUNDO VALLES, individually and on) Case No. 21CV45611
behalf of all other similarly situated)
12 employees,) **CLASS ACTION**

13 Plaintiff,

14 vs.

15
16 TRICORP GROUP, INC., a California
Corporation; and DOES 1 to 100, inclusive,

17 Defendants.

) **~~PROPOSED~~ ORDER GRANTING FINAL**
) **APPROVAL OF CLASS ACTION AND**
) **PAGA SETTLEMENT AND JUDGMENT**

) Date: September 9, 2022

) Time: 9:00 a.m.

) Dept.: 2

) Judge: Hon. David Sanders

) Filed: September 16, 2021

) Trial Date: None Set

20
21 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

22 The above-referenced class action ("Action") having come before the Court on September 9,
23 2022, in Department 2 before the Honorable David Sanders presiding for a hearing and Order Granting
24 Final Approval of Class Action and PAGA Settlement and Judgement ("Final Order"), consistent with
25 the Court's Preliminary Approval Order ("Preliminary Approval Order"), filed and entered March 17,
26 2022, and as set forth in the Joint Stipulation of Settlement and Release Between Plaintiff and Defendant
27 ("Stipulation") in the Action, and due and adequate notice having been given to all Class Members as
28 required in the Preliminary Approval Order, and the Court having considered all papers filed and

proceedings had herein and otherwise being fully informed and good cause appearing therefore, it is hereby **ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. All terms used herein shall have the same meaning as defined in the Stipulation.

2. Consistent with the definitions provided in the Stipulation, the term "Settlement Class" and "Class Members" shall mean the following: all persons employed by Defendant as non-exempt employees in California between May 7, 2017, and March 17, 2022. The Settlement Class, however, shall not include any person who previously settled or released the claims covered by this Settlement, any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement, or any person who submitted a timely and valid Request for Exclusion as provided in this Settlement. The "Class Period" shall be May 7, 2017, through March 17, 2022. For purposes of the Settlement and this Final Order, "Released Parties" as referenced herein and as released in the Settlement shall collectively mean: (i) Tricorp Group, Inc. ("Defendant"); (ii) each of Defendant's respective past, present and future parents, subsidiaries and affiliates; (iii) the past, present and future partners, shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing. The term "Action" shall mean this class action.

3. This Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including all Class Members.

4. Distribution of the Notice and the Claim Form directed to the Class Members as set forth in the Stipulation and the other matters set forth therein has been completed in conformity with the Preliminary Approval Order, including notice to all Class Members who could be identified through reasonable effort, is the best notice practicable under the circumstances. The Notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, to all persons entitled to such Notice, and the Notice fully satisfied the requirements of due process. All Class Members and all Released Claims are covered by and included within the Settlement and this Final Order.

5. The Court hereby finds the Settlement was entered into in good faith pursuant to and within the meaning of California Code of Civil Procedure section 877.6. The Court further finds that

1 the Settlement is fair, adequate, and reasonable and that Plaintiff has satisfied the standards and
2 applicable requirements for final approval of this class action settlement under California law, including
3 the provisions of California Code of Civil Procedure section 382 and Federal Rule of Civil Procedure
4 23, approved for use by the California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800,
5 821.

6 6. The Court hereby approves the Settlement set forth in the Stipulation and finds that the
7 Settlement is, in all respects, fair, adequate and reasonable, and directs the Parties to effectuate the
8 Settlement according to its terms. The Court finds that the Settlement has been reached as a result of
9 intensive, serious and non-collusive arms-length negotiations. The Court further finds that the Parties
10 have conducted extensive investigation and research, and counsel for the Parties are able to reasonably
11 evaluate their respective positions. The Court also finds that Settlement at this time will avoid additional
12 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
13 of the Action. The Court has reviewed the benefits that are being granted as part of the Settlement and
14 recognizes the significant value to the Class Members. The Court also finds that the Class is properly
15 certified as a class for settlement purposes only.

16 7. As of the date of entry of this Final Order, each and every Released Claim (as defined in
17 the Stipulation and set forth below) of each and every Class Member is and shall be deemed to be
18 conclusively released as against the Released Parties. As of the date of this Final Order, the Class
19 Representatives and each and every Class Member who has not submitted a valid Request for Exclusion
20 is hereby released and forever barred and enjoined from prosecuting the Released Claims, except as to
21 such rights or claims as may be created by the Settlement, against Defendant and the Released Parties
22 from any and all claims under state, federal and local law alleged in the Action and that reasonably could
23 have been alleged in the Action based on the factual allegations contained in the operative complaint in
24 the Action and any amendments thereto, as to the Class Members, including but not limited to California
25 Labor Code sections 201, 202, 203, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5,
26 248.5, 256, 558, 558.1, 510, 512, 1174, 1193.6, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*, California
27 Business and Professions Code section 17200, *et seq.*, the applicable Wage Order(s), and all claims for
28 or related to unpaid wages, overtime or double time, minimum wages, off-the-clock work, regular rate

1 of pay, timely paid wages, timely final wages at separation, split shifts, reporting time pay, rest periods
2 or rest period premiums, meal periods or meal period premiums, accurate and itemized wage statements,
3 failure to maintain accurate time records and/or payroll records as required by law, failure to reimburse
4 business expenses, failure to pay additional 401(k) benefits and/or deferred compensation benefits
5 and/or matching benefits for payments received under the Settlement, unfair competition, unfair
6 business practices, unlawful business practices, fraudulent business practices, conversion, injunctive
7 relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature
8 (including but not limited to civil penalties, waiting-time penalties, wage statement penalties, and PAGA
9 penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from
10 May 7, 2017, through the date the Court finally approves the Settlement (collectively "Released
11 Claims"). Expressly excluded from the release are claims for retaliation, discrimination, failure to
12 accommodate and engage in the interactive process, wrongful termination, unemployment insurance,
13 disability, workers compensation, and claims outside the Released Claims. The release of claims shall
14 not include any claims that cannot be released as a matter of law. In addition, as of the date of this Final
15 Order, the Class Representative and the Settlement Class, and each member of the Class who has not
16 submitted a valid Request for Exclusion, is forever barred and enjoined from instituting or accepting
17 damages or obtaining relief against the Released Parties for any period from May 7, 2017, up to and
18 including the date of final approval of the Settlement, relating to the Released Claims.

19 8. Neither the Settlement nor any of the terms set forth in the Stipulation is an admission
20 by Defendant, or any of the other Released Parties, nor is this Final Order a finding of the validity of
21 any claims in the Action or of any wrongdoing by Defendant, or any of the other Released Parties.
22 Neither this Final Order, the Stipulation, nor any document referred to herein, nor any action taken to
23 carry out the Stipulation is, may be construed as, or may be used as, an admission by or against
24 Defendant, or any of the other Released Parties, of any fault, wrongdoing or liability whatsoever. The
25 entering into or carrying out of the Stipulation, and any negotiations or proceedings related thereto, shall
26 not in any event be construed as, or deemed to be evidence of, an admission or concession with regard
27 to the denials or defenses by Defendant, or any of the other Released Parties, and shall not be offered in
28 evidence in any action or proceeding in any court, administrative agency or other tribunal for any

1 purpose whatsoever other than to enforce the provisions of this Final Order, the Stipulation, the Released
2 Claims, or any related agreement or release. Notwithstanding these restrictions, any of the Released
3 Parties may file in the Action, or submit in any other proceeding, the Final Order, the Stipulation, and
4 any other papers and records on file in the Action as evidence of the Settlement to support a defense of
5 *res judicata*, *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense
6 as to the Released Claims.

7 9. The Court hereby enters judgment in the entire Action as of the filing date of this Final
8 Order, pursuant to the terms set forth in the Stipulation. Without affecting the finality of this Final Order
9 in any way, the Court hereby retains continuing jurisdiction over the interpretation, implementation and
10 enforcement of the Settlement and all orders entered in connection therewith pursuant to California Code
11 of Civil Procedure section 664.6.

12 10. The Court finds the settlement payments provided for under the Settlement to be fair and
13 reasonable in light of all of the circumstances. The Court orders the calculations and the payments to
14 be made and administered in accordance with the terms of the Settlement.

15 11. The Court hereby confirms Galen T. Shimoda and Justin P. Rodriguez of Shimoda &
16 Rodriguez Law, PC, as Class Counsel in the Action.

17 12. The Court further finds that the common fund doctrine is applicable to this Action
18 because there is a sufficiently identifiable class of beneficiaries (the Class), the benefits can be accurately
19 traced to the Settlement that Plaintiff and Class Counsel negotiated on behalf of the Class, and the fee
20 can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage
21 of the common fund. *See Serrano v. Priest* (1977) 20 Cal.3d 25, 34-35. The Court finds the attorneys'
22 fees request of thirty-five percent (35%) of the common fund to be appropriate compensation for Class
23 Counsel. The attorneys' fees request is within the range that has been approved by other Courts in
24 similar cases and reasonable in light of the circumstances of this case, the substantial and beneficial
25 results obtained on behalf of the Class, and the contingent nature of the recovery over the course of this
26 Action, which included potential loss at summary judgment, certification, and/or trial proceedings. A
27 lodestar cross check further confirms the reasonableness of this fee. Pursuant to the terms of the
28 Settlement, and the authorities, evidence and argument submitted by Class Counsel, the Court hereby

1 awards Class Counsel attorneys' fees in the amount of \$59,500.00 and attorneys' costs in the amount of
2 \$2,756.04, from the Gross Settlement Amount as final payment for and complete satisfaction of any and
3 all attorneys' fees and costs incurred by and/or owed to Class Counsel and any other person or entity
4 related to the Action. The Court further orders that the award of attorneys' fees and costs set forth in
5 this Paragraph shall be administered pursuant to the terms of the Stipulation, and made payable to and
6 deposited into the bank account of "Shimoda & Rodriguez Law, PC" as Class Counsel in the Action.

7 13. The Court also hereby approves and orders an Enhancement Award to Plaintiff and Class
8 Representative Raymundo Valles in the amount of \$7,500.00 from the Gross Settlement Amount.

9 14. The Court also hereby approves and orders payment in the amount of \$15,000.00 from
10 the Gross Settlement Amount for PAGA penalties, payable to the California Labor and Workforce
11 Development Agency.

12 15. The Court also hereby approves and orders payment from the Gross Settlement Amount
13 for actual claims administration expenses incurred by the Claims Administrator, Simpluris, Inc. in the
14 amount of \$6,500.00.

15 16. The Court also hereby approves and orders that any residue from uncashed settlement
16 award checks after the expiration date will be split 50/50 and paid out in equal shares to Koinonia Family
17 Services, a non-profit 501(c)(3) organization with child advocacy programs within the State of
18 California, and Capital Pro Bono, Inc., as the *cy pres* recipients pursuant to Code of Civil Procedure
19 section 384(b); any residue received by Koinonia Family Services shall be used solely for child advocacy
20 programs within the State of California pursuant to Code of Civil Procedure section 384(b).

21 17. The Court also hereby finds and orders that the Stipulation is and constitutes a fair,
22 adequate, and reasonable compromise of the Released Claims against Defendant and the Released
23 Parties.

24 18. Provided the Settlement becomes effective under the terms of the Stipulation, the Court
25 also hereby orders that the deadline for mailing the Court-approved Settlement Awards, attorneys' fees
26 and costs, and Enhancement Awards is as set forth in the Implementation Schedule within the
27 Preliminary Approval Order.

1 19. The Court also hereby finds that there were no objections to the Settlement raised by any
2 person on the record at the hearing on the Final Order.

3 20. Having given final approval to the Stipulation and entering judgment by and through this
4 Order, the Case Management/OSC hearing currently set for October 19, 2022, at 1:30 p.m. in
5 Department 4 is hereby vacated.

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7 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

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9 Dated: 9/9/22


JUDGE OF THE SUPERIOR COURT

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11 **David M. Sanders**
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