

FILED

APR 25 2023

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Hahn, Deputy

C. Hahn

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13 Attorneys for Representative Plaintiff

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF MARIN**

16 SEAN SPILLER, individually, and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 TIBURON PENINSULA CLUB, and
21 DOES 1 through 100, inclusive,

22 Defendants.

Case No. CIV2101589

CLASS ACTION *SEP*

[PROPOSED] ORDER:

- (1) GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT;
- (2) AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;
- (3) AWARDING ENHANCEMENT TO THE REPRESENTATIVE PLAINTIFF; AND
- (4) AWARDING REIMBURSEMENT OF SETTLEMENT ADMINISTRATION COSTS

Date: April 25, 2023

Time: 1:30 p.m.

A

COLE & VAN NOTE
ATTORNEYS AT LAW
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BY FAX

1 This matter came before the Superior Court of the State of California, in and for the County
2 of Marin, at 1:30 p.m. on April 25, 2023 in Courtroom A, with Cole & Van Note appearing as
3 counsel for Representative Plaintiff Sean Spiller, individually and on behalf of the Plaintiff Class
4 and Aggrieved Employees, and Ogletree, Deakins, Nash, Smoak & Stewart, P.C. appearing as
5 counsel for defendant Tiburon Peninsula Club and Does 1 through 100 ("Defendants"). The Court,
6 having carefully considered the briefs, argument of counsel and all matters presented to the Court
7 and good cause appearing, hereby GRANTS Plaintiff's Motion for Final Approval of Class Action
8 Settlement.

9 **I.**

10 **FINDINGS**

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

- 13 1. All terms used herein shall have the same meaning as defined in the proposed
14 Settlement Agreement ("Agreement").
15 2. This Court has jurisdiction over the subject matter of the above-captioned litigation
16 and over all Parties to this litigation, including the Settlement Class.

17 **Preliminary Approval of the Settlement**

- 18 3. On February November 22, 2022, the Court granted preliminary approval of a
19 class-wide settlement. At this same time, the Court approved certification of a provisional
20 Settlement Class for settlement purposes only.

21 **Notice to the Plaintiff Class**

- 22 4. In compliance with the Preliminary Approval Order, the Class Notice Package was
23 mailed by first class mail to the Plaintiff Class members at their last known addresses on or about
24 January 19, 2023. Emailing and mailing of the Class Notice Package to their last known addresses
25 was the best notice practicable under the circumstances and was reasonably calculated to
26 communicate actual notice of the litigation and the proposed settlement to the Plaintiff Class.

- 27 5. According to the Claims Administrator, there are 99 members of the Plaintiff Class
28 who will receive an Individual Settlement Share. The deadline for opting out or objecting was

February 18, 2023 There was an adequate interval between mailing of the Notice and the deadline to permit Plaintiff Class members to choose what to do and act on their decision. A total of one (1) class member opted out, and no class member objected.

Fairness of the Settlement

- a. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
- b. There has been no collusion between the parties in reaching the proposed settlement.
- c. Plaintiff's investigation and discovery have been sufficient to allow the court and counsel to act intelligently.
- d. Counsel for both parties are experienced in similar employment class action litigation. All counsel recommended approval of the Agreement.
- e. The percentage of objectors and requests for exclusion is small.
- f. The participation rate was high, with no objections and one (1) Plaintiff Class member opting-out.

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

7. The proposed Agreement is approved as fair, adequate and reasonable and in the best interests of Class Members.

Attorneys' Fees/Costs

8. The Agreement provides for (and counsel seeks) an award of \$105,000 to Class Counsel as attorneys' fees in this action, representing 35% of the Gross Settlement Fund, plus actual costs, subject to the Court's approval. Class Counsel requests an award of \$4,826.86 as reimbursement for litigation costs.

1 9. The award of attorneys' fees and reimbursement of litigation costs are reasonable,
2 in light of the contingent nature of Class Counsel's fee, the risks assumed, the results achieved by
3 Class Counsel. and in light of the significant amount of uncompensated work Class Counsel
4 anticipates post-final approval of the settlement.

5 **Enhancement Awards**

6 10. The Agreement provides for an Enhancement Award of up to \$5,000 for
7 Representative Plaintiff from the Gross Settlement Amount, subject to the Court's approval. From
8 this aggregate amount, the Agreement endorses payments of an Enhancement Award in the amount
9 of \$5,000 to Representative Plaintiff Sean Spiller. The Court finds these Enhancement Awards
10 reasonable in light of the risks and burdens undertaken by Representative Plaintiff in this Action
11 and for his time and effort in bringing and prosecuting this matter on behalf of the Plaintiff Class.

12 **Cost of Settlement Administration**

13 11. The Agreement provides for payment of settlement administration expenses from
14 the Gross Settlement Amount. The Settlement Administrator has \$6,000.00 in Claims
15 Administration expenses. The amount of this payment is reasonable in light of the work performed
16 by the Settlement Administrator and shall be awarded thereto.

17 **PAGA Payment**

18 12. The Agreement provides for a PAGA payment of \$10,000, from which \$7,500
19 shall be allocated and delivered to the California Labor and Workforce Development Agency
20 ("LWDA").
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II.
ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Settlement Class is certified for the purposes of settlement only. The Settlement Class is hereby defined as:

all non-exempt persons working at the Cafe and in any other food service capacity employed by Tiburon Peninsula Club who worked in California at any time on or after April 26, 2017 to November 22, 2022.

2. All persons who meet the foregoing definition and did not exclude themselves from the Agreement are members of the Settlement Class.

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

4. Class Counsel are awarded attorneys' fees in the amount of \$105,000.00 and litigation costs in the amount of \$4,826.86 Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff or members of the Settlement Class.

5. Payment of an Enhancement Award of \$5,000 to Representative Plaintiff Sean Spiller is approved.

6. The payment of \$6,000.00 to the Settlement Administrator for settlement administration services is approved.

7. The PAGA payment to the California Labor and Workforce Development Agency in the amount of \$7,500 (i.e., 3/4 of \$10,000) is approved.

8. A Final Judgment in this action shall be entered. The Final Judgment shall bind each Settlement Class member. The Final Judgment shall operate as a full release and discharge of the released claims against the released parties. All rights to appeal the Final Judgment have been waived. The Final Judgment and Final Approval Order shall have *res judicata* effect and bar all Settlement Class members from bringing any action asserting Settlement Class members' released claims under the Agreement.

1 9. The Agreement and Settlement are not an admission by Defendant, nor is this Final
2 Approval Order a finding, of the validity of any claims in the Action or of any wrongdoing by
3 Defendant. Neither this Final Approval Order, the Final Judgment, the Agreement, nor any
4 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
5 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
6 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
7 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of,
8 an admission or concession with regard to the denials or defenses by Defendant and shall not be
9 offered in evidence in any action or proceeding against Defendant in any court, administrative
10 agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this
11 Final Approval Order, the Final Judgment, the Agreement or any related agreement or release.
12 Notwithstanding these restrictions, any of the released parties may file in the Action or any other
13 proceeding this Final Approval Order, the Final Judgment, the Agreement, or any other papers and
14 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
15 collateral estoppel, release or other theory of claim or issue preclusion or similar defense as to the
16 released claims.

17 10. Notice of entry of this Final Approval Order and the ensuing Final Judgment shall
18 be given to Class Counsel on behalf of Plaintiff and all Settlement Class members. It shall not be
19 necessary to send notice of entry of this Final Approval Order or the ensuing Final Judgment to
20 individual Settlement Class members. The time for any appeal shall run from service of notice of
21 entry of the Final Approval Order and Final Judgment by Class Counsel on Defendant.

22 11. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
23 interpret, implement and enforce the Agreement, to hear and resolve any contested challenge to a
24 claim for settlement benefits and to supervise and adjudicate any dispute arising from or in
25 connection with the distribution of settlement benefits.

26 12. In the event the Settlement does not become final and effective in accordance with
27 the terms of the Settlement Agreement, or is terminated, cancelled or fails to become effective for
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1 any reason, then this Final Approval Order, the Final Judgment, and all orders entered in
2 connection herewith shall be rendered null and void and shall be vacated.

3 13. A Compliance Hearing is hereby set for NOVEMBER 14, 2023 ^{9 AM} in Courtroom A of
4 this Court. At least ten (10) court days before the Compliance Hearing, Class Counsel shall submit
5 a Compliance Statement, accompanied by a Declaration from the Settlement Administrator
6 (including a summary accounting identifying the distributions made, the number and value of any
7 uncashed checks, the status of any unresolved issues, and any other matters appropriate to evaluate
8 the effectiveness and completeness of the distribution).

9
10 **IT IS SO ORDERED.**

11
12 Dated: APRIL 25, 2023

By: 

Judge of the Superior Court

STEPHEN P. FRECCERO

MARIN COUNTY Superior Court
3501 Civic Center Drive
P.O. Box 4988
San Rafael, CA 94913-4988

SEAN SPILLER

vs.

TIBURON PENINSULA CLUB

CASE NO. CV2101589

**PROOF OF SERVICE BY
FIRST CLASS MAIL**

*Code of Civil Procedure Sections
1013a and 2015.5*

I am an employee of the Marin County Superior Court. I am over the age of 18 years and not a party to this action. My business address is 3501 Civic Center Drive, Hall of Justice, San Rafael, California.

On April 25, 2023, I served the following document(s): **ORDER: (1) GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) AWARDED ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL; (3) AWARDED ENHANCEMENT TO THE THE REPRESENTATIVE PLAINTIFF; AND (4) AWARDED REIMBURSEMENT OF SETTLEMENT ADMINISTRATION COSTS** in said action to all interested parties, by placing the envelope for collection and mailing on the date shown thereon, so as to cause it to be mailed on that date following standard court practices.

I am readily familiar with the court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

SCOTT EDWARD COLE, ESQ.
555 – 12TH STREET, #1725
OAKLAND, CA 94607

DOUGLAS J. FARMER, ESQ.
ONE EMBARCADERO CENTER, #900
SAN FRANCISCO, CA 94111

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

JAMES M. KIM
Court Executive Officer

Executed at San Rafael, California

By: 
M. Murphy, DEPUTY

M. MURPHY

Marin County Superior Court

P.O. Box 4988

San Rafael, CA 94913-4988



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