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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

DEMONTAE SIMPSON, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

BAY AREA COMMUNITY SERVICES, INC.,
a California corporation; and DOES 1 through
10, inclusive,

Defendant

Case No.: RG21096395

[Hon. Brad Seligman, Dept. 23]

CLASS ACTION

**AMENDED ~~[PROPOSED]~~ FINAL
ORDER AND JUDGMENT GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

FINAL APPROVAL HEARING

Date: August 15, 2023

Time: 3:00 p.m.

Dept.: 23

Action Filed: April 20, 2021

Trial Date: Not set

1 On April 10, 2023, this Court issued an Order Granting Plaintiff's Motion for
2 Preliminary Approval of Class Action Settlement. Plaintiff Demontae Simpson ("Plaintiff") and
3 Defendant Bay Area Community Services, Inc. ("Defendant") (together, the "Parties") reached
4 a resolution of the above-captioned class and representative action (the "Litigation"). Plaintiff
5 now moves the Court for an order and judgment granting final approval of the Joint Stipulation
6 of Class Action Settlement (the "Settlement" or "Settlement Agreement") that was attached as
7 Exhibit 1 to the Declaration of Kane Moon in Support of Plaintiff's Motion for Final Approval
8 of Class Action Settlement.

9 Due and adequate notice having been given to Class Members, and the Court having
10 reviewed and considered Plaintiff's Motion for Final Approval of Class Action Settlement, the
11 supporting declarations and exhibits thereto, all other papers filed and proceedings had hereto,
12 and the record in this Litigation, and good cause appearing, **IT IS HEREBY ORDERED,**
13 **ADJUDGED, AND DECREED AS FOLLOWS:**

14 1. The Court hereby GRANTS Final Approval of the Settlement, and further ORDERS
15 final Judgment to be entered in accordance with the terms herein.

16 2. A final approval hearing was held on the question of whether the proposed
17 Settlement Agreement, attorneys' fees and costs to Class Counsel, the class representative
18 service payment, payment for settlement administration costs, and the PAGA allocation to the
19 California Labor and Workforce Development Agency (the "LWDA") should be finally
20 approved as fair, reasonable, and adequate as to Class Members.

21 3. The Court finds that the Settlement appears to have been made and entered into
22 in good faith, the terms of which are fair, reasonable, and adequate, and therefore, meets the
23 requirements for final approval. The Court approves the Settlement, as set forth below, and, for
24 purposes of this final Order and Judgment, refers to all defined terms as set forth in the
25 Settlement Agreement.

26 4. The Court certifies, for settlement purposes only, the following Class (the
27 "Settlement Class"): All non-exempt employees of Defendant who worked for Defendant in
28 California during the Class Period. The Class Period is April 20, 2017 through November 30,

2022. Excluded from the Settlement Class are all persons who properly and timely elected to opt out.

5. The deadline to request exclusion from the Settlement or to submit written objections to the Settlement was July 14, 2023. The only requests for exclusion that were properly and timely received were for the following individuals: Taliah Baatin and Katherine Lutz. Accordingly, these individuals are excluded from the Settlement Class. Notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the Settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969, as requests to be excluded from the Settlement do not apply to the Released PAGA Claims.

6. All other Class Members who did not request exclusion from the Settlement had an opportunity to object to the proposed Settlement. Only one written objection was received, which was by an individual named Bessie Clark. Ms. Clark also appeared at the Final Approval Hearing and stated her objection to the Court. For the reasons provided at the Final Approval Hearing, the objection is hereby overruled.

7. The Notice of Proposed Class Action Settlement (the "Class Notice"), which was attached to the Settlement Agreement as Exhibit A and provided to the Class pursuant to the plan for distribution described under the Settlement Agreement, conformed with the requirements of California Rules of Court 3.766 and 3.769, and constituted the best notice practicable under the circumstances, by providing individual and adequate notice of the proceedings and of the matters set forth therein to Class Members. The Class Notice fully satisfied the requirements of due process and provided sufficient notice to all persons entitled thereto.

8. By operation of this final Order and Judgment and Defendant's payment of all sums due under the Settlement Agreement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from the Settlement of Class

1 claims, will release claims as follows:

2 a. **Identity of Released Parties.** The released parties are Defendant, and each of
3 its former and present direct and/or indirect owners, dba's, affiliates, parents,
4 subsidiaries, brother and sister corporations, divisions, related companies,
5 successors and predecessors, and current and former employees, attorneys,
6 officers, directors, shareholders, owners, trustees, attorneys, fiduciaries,
7 beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers,
8 representatives, administrators, employee benefit plans, and assigns of said
9 entities (collectively "Releasees").

10 b. **Date Release Becomes Effective.** The Released Claims will be released upon
11 the later of (1) the Settlement's Effective Date, or (2) the satisfaction of
12 Defendant's obligation to provide to the Settlement Administrator a sum in the
13 amount required to satisfy all required payments and distributions pursuant to
14 this Settlement and the Order and Judgment of final approval. Class Members
15 will not release the Released Claims or Released PAGA Claims until both the
16 Effective Date of the Settlement has occurred, **and** Defendant has paid all
17 amounts owing under the Settlement.

18 c. **Claims Released by Settlement Class Members.** Each and every Class
19 Member, on behalf of himself or herself and his or her heirs and assigns, unless
20 he or she has submitted a timely and valid Request for Exclusion (which will
21 not effectuate an opt-out from the release of Released PAGA Claims), hereby
22 releases the Released Parties from the following claims for the entire Class
23 Period:

24 i. any and all claims stated in the Action, or that could have been stated
25 based on the facts alleged in the Action, including but not limited to all
26 state wage and hour claims (including all claims under the California
27 Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock
28 work, meal periods, rest periods, unreimbursed business expenses, wage

1 statement violations, interest, penalties, and attorneys' fees, waiting
2 time penalties, withholding from wages and the related provisions of the
3 Labor Code including but limited to Labor Code §§ 201-204, 210, 216,
4 218.6, 226, 226.3 , 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1198,
5 2802 derivative claims under California Business & Professions Code
6 §§ 17200 et seq., and all claims under the governing Wage Order, and
7 FLSA ("Released Claims");

8 ii. as to any Class Member who cashes their Settlement Payment, the
9 Settlement Administrator shall include language on the Settlement
10 Payments that informs the Class Members that the signing and
11 negotiation of that check shall serve as the Class Member's consent to
12 join the Action for purposes of releasing claims arising under the Fair
13 Labor Standards Act that are alleged in the Action or related to the
14 claims stated or that could have been stated in the Action, implicitly or
15 explicitly; and,

16 iii. in addition, as to all Class Members, including all PAGA Employees,
17 release the Released PAGA Claims, regardless of whether they have
18 requested exclusion from the Settlement as to the Class Released claims.

19 d. **Claims Released by the Class, Including PAGA Employees.** All Class
20 Members, including all PAGA Employees, release the Released PAGA Claims,
21 regardless of whether they have requested exclusion from the Settlement as to
22 the Class Released claims. "Released PAGA Claims" means all claims for
23 penalties and any other available relief pursuant to PAGA based on the facts
24 and/or claims asserted in Plaintiff's Complaint arising during the PAGA Period.

25 9. The Parties shall bear their own respective attorneys' fees and costs, except as
26 otherwise provided for in the Settlement Agreement and approved by the Court.

27 10. The Court finds that the Gross Settlement Amount, the Net Settlement Amount,
28 and the methodology used to calculate Settlement Payments to Settlement Class Members and

1 PAGA Employees are fair and reasonable, and therefore, authorizes the Settlement
2 Administrator to pay settlement allocations in accordance with the terms of the Settlement
3 Agreement. Defendant shall pay into a common fund the total of \$945,168.68¹ (the “Gross
4 Settlement Amount”) to resolve this Litigation. Defendant shall fund the Gross Settlement
5 Amount, plus an amount to cover the employer-side payroll taxes on the wage portion of the
6 Settlement Awards as calculated by the Settlement Administrator, no later than 14 days after
7 the “Effective Date,” as that term is defined in the Settlement Agreement. Individual payments
8 to Settlement Class Members and PAGA Employees shall be distributed within 14 calendar days
9 of the receipt of funding and in accordance with the terms of the Settlement Agreement.

10 11. A total amount of \$50,000.00 shall be allocated to penalties under the California
11 Private Attorneys General Act of 2004 (“PAGA”), and distributed as follows: 25% (i.e.,
12 \$12,500.00) to the PAGA Employees and 75% (i.e., \$37,500.00) to the LWDA. The LWDA’s
13 claims for civil penalties pursuant to PAGA are hereby extinguished.

14 12. The Court confirms the appointment of Plaintiff Demontae Simpson as the Class
15 Representative, for settlement purposes. In addition to any recovery that Plaintiff is eligible to
16 receive under the Settlement Agreement as a Class Member and PAGA Employee, the Court
17 approves and orders a service payment from the Gross Settlement Amount to Plaintiff in the
18 amount of \$7,500.00 in recognition for his role and service as the Class Representative, for the
19 risks and work attendant to that role, and for his general release of claims, both known and
20 unknown, and waiver of Section 1542 rights.

21 13. The Court confirms the appointment of Moon Law Group, PC as Class Counsel,
22 for settlement purposes, as they are experienced in wage and hour class action litigation, have
23 no conflicts of interest with Plaintiff or other Class Members, and have adequately represented
24 the Class interests. The Court approves and orders the payment from the Gross Settlement
25 Amount to Class Counsel for reasonable attorneys’ fees not to exceed 30% of the Gross
26

27 ¹ The Court notes that the Escalator Clause, provided at paragraph 30(d) of the Settlement
28 Agreement, was triggered. Defendant elected to pay the additional \$70,168.68 to increase the Gross
Settlement Amount and keep the November 30, 2022 release period.

1 Settlement Amount (i.e., \$283,550.60), as well as \$13,686.41 for reimbursement of litigation
2 costs actually incurred. The Court finds that the fees and costs amounts are reasonable in light
3 of the benefit provided to the Class. The Settlement Administrator shall retain 10% of the fee
4 award in the trust fund until the completion of the distribution process and the Court's approval
5 of a final accounting.

6 14. The Court confirms the appointment of ILYM Group, Inc. as the Settlement
7 Administrator who has fulfilled its initial notice and reporting duties owed under the Settlement
8 Agreement. The Court approves and orders the payment of \$16,750.00 from the Gross
9 Settlement Amount to ILYM Group, Inc. for the costs of settlement administration.

10 15. In accordance with California Rule of Court 3.771(b), notice of this final Order and
11 Judgment will be given to the Class by the Settlement Administrator who shall post the final Order
12 and Judgment on a website maintained by the Settlement Administrator for a period of not less
13 than 90 calendar days after the final Judgment is entered. The address of that website was included
14 in the Class Notice.

15 16. This final Order and Judgment is intended to be a final disposition of the Litigation
16 in its entirety and is intended to be immediately appealable.

17 17. The Court shall retain continuing jurisdiction over the Parties, including all disputes
18 relating to the Settlement Administrator's performance of its duties, and over all terms and
19 conditions of the Settlement Agreement, until all payments and obligations contemplated by this
20 Settlement have been fully carried out.

21 18. The Court confirms the approval of the California State Bar's "Justice Gap Fund"
22 as an appropriate *cy pres* beneficiary of any uncashed checks, pursuant to California Code of
23 Civil Procedure section 384. Following the expiration of the 180-day check-cashing deadline,
24 should there be uncashed checks, Plaintiff's Counsel shall file an amended judgment providing
25 the Settlement Administrator to transmit those amounts to the Justice Gap Fund.

26 19. The Settlement is finally approved but is not an admission by Defendant of the
27 validity of any claims in this Litigation, or of any wrongdoing by Defendant or of any violation of
28 law. Neither the Settlement Agreement nor any related document shall be offered or received in

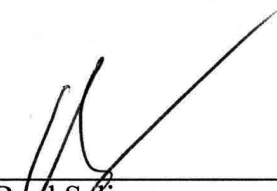
1 evidence in any civil, criminal, or administrative action or proceeding other than such proceedings
2 as may be necessary to consummate or enforce the Settlement Agreement. The obligations set forth
3 in the Settlement Agreement are deemed part of this Order and Judgment, and the Parties are
4 ordered to carry out the Settlement Agreement according to its terms.

5 20. The Court sets a Non-Appearence Hearing (Case Review) re: Distribution on **June**
6 **11, 2024, at 3:00 p.m. in Department 23.** Class Counsel are ordered to file a final report and
7 declaration by the Settlement Administrator regarding settlement distribution and proposed
8 amended judgment no later than one week in advance of the hearing. No appearance will be
9 required at the Case Review if the Settlement Administrator's declaration reports that all the
10 distributions under the Settlement Agreement are complete.

11
12 **IT IS SO ORDERED.**

13 DATE:

8/15/23

14 
Hon. Brad Seligman

Judge of the Superior Court, County of Alameda

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 08/16/2023
PLAINTIFF/PETITIONER: Demontae Simpson	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: Bay Area Community Services, Inc.	A. Hewitt
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: RG21096395

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the AMENDED FINAL ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF LASS ACTION SETTLEMENT entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Charlotte Anabel Mikat-Stevens
MOON LAW GROUP, PC
cmikat-stevens@moonlawgroup.com

Dated: 08/16/2023

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Hewitt, Deputy Clerk