

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego
10/10/2023 at 02:51:43 PM
Clerk of the Superior Court
By: Andra Naljanja, Deputy Clerk
San Diego Superior Court

NOV - 6 2023

Clerk of the Superior Court
By: H. Chavarin, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

NICHOLAS CARLTON, RICHARD
FLORES, ROBERT LARKIN, LENNY
MARTINEZ, GUILIAN MORENO, and
JUAN CARLOS PINEDA, individually, on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act of 2004 ("PAGA");

Plaintiffs,

v.

WAXIE'S ENTERPRISES, LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 37-2021-00026158-CU-OE-CTL

Assigned for All Purposes to:
Honorable Eddie C. Sturgeon
Department C-67

CLASS ACTION

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

Hearing Date: November 6, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department C-67

Complaint Filed: June 16, 2021
FAC Filed: August 30, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Nicholas Carlton, Richard
2 Flores, Robert Larkin, Lenny Martinez, Guilian Moreno, and Juan Carlos Pineda's ("Plaintiffs,"
3 "Plaintiff Carlton," "Plaintiff Flores," "Plaintiff Larkin," "Plaintiff Martinez," "Plaintiff
4 Moreno," and "Plaintiff Pineda") Motion for Final Approval of Class Action Settlement, and
5 considering the papers submitted in support of the motion, including the Class Action and PAGA
6 Settlement Agreement and Class Notice ("Settlement Agreement," "Settlement," or
7 "Agreement"), hereby **FINDS AND ORDERS**:

8 Plaintiffs and Defendant Waxie's Enterprises, LLC ("Defendant") entered the Settlement
9 Agreement on or about November 15, 2022 to settle this lawsuit.

10 The Court entered an order dated June 30, 2023 preliminarily approving the settlement of
11 this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure section
12 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members, providing
13 Class Members with an opportunity to object to the Settlement or exclude themselves from the
14 Class, and scheduling a Final Approval Hearing.

15 The Court held a Final Approval Hearing on November 6, 2023 to determine whether to
16 give final approval to the Settlement of this lawsuit.

17 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
18 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
19 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
20 in the Settlement Agreement.

21 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
22 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
23 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
24 including jurisdiction to approve the Settlement and grants final certification of the Class.

25 3. Final Class Certification. The Court finds the Class satisfies all applicable
26 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
27 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
28 exempt employees of Defendant who worked for Defendant in the State of California at any time

1 during the period from June 16, 2017 to July 1, 2022 ("Class," "Class Members," and "Class
2 Period"). There are seven hundred thirty-eight (738) Class Members who did not submit valid
3 and timely Requests for Exclusion from the Settlement ("Participating Class Members").

4 4. Adequacy of Representation. Class Counsel fully and adequately represented the
5 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
6 Code of Civil Procedure section 382.

7 5. Class Notice. The Court finds the Court Approved Notice of Class Action
8 Settlement and Hearing Date for Final Approval ("Class Notice") and its distribution to Class
9 Members were implemented pursuant to the Settlement and this Court's Preliminary Approval
10 Order. The Court also finds the Class Notice:

- 11 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
12 pendency of this lawsuit; (ii) material terms and provisions of the
13 Settlement Agreement and their rights; (iii) their right to object to any
14 aspect of the Settlement Agreement; (iv) their right to exclude themselves
15 from the Settlement Agreement; (v) their right to receive settlement
16 payments; (vi) their right to appear at the Final Approval Hearing; and
17 (vii) binding effect of the orders and judgment in this lawsuit on all
18 Participating Class Members;
- 19 b. constitutes notice that fully satisfied the requirements of Code of Civil
20 Procedure section 382, California Rule of Court 3.769, and due process;
- 21 c. constitutes the best practicable notice to Class Members under the
22 circumstances of this lawsuit; and
- 23 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

24 6. Final Settlement Approval. The terms and provisions of the Settlement
25 Agreement have been entered into good faith and are the product of arm's-length negotiations by
26 experienced counsel who have done a meaningful investigation of the claims. The Settlement
27 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
28

adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Settlement Agreement and this Order and Judgment are binding on Plaintiffs, Participating Class Members, Aggrieved Employees, and their spouses, heirs, registered domestic partners, executors, administrators, successors, and assigns. In addition, those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in this lawsuit and are encompassed by the Released Class Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims. The Settlement Agreement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted timely requests for exclusion.

8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

9. Release by Participating Class Members. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, all Participating Class Members shall release the Released Parties from the Released Class Claims.

a. Release by Aggrieved Employees. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, all Aggrieved Employees shall release the Released Parties from the Released PAGA Claims.

b. Plaintiffs' Release. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release

1 and discharge the Released Parties from Plaintiffs' Release. Plaintiffs also
2 expressly waive and relinquish the provisions, rights, and benefits, if any,
3 of section 1542 of the Civil Code.

4 c. Released Parties. The Released Parties include Defendant and its parents,
5 predecessors, successors, all affiliates, subsidiaries, officers, directors,
6 members, agents, employees, and stockholders.

7 10. Class Representative Service Payments. The Court finds the Class Representative
8 Service Payments of \$10,000, to be paid by Defendant to Plaintiff Carlton, Plaintiff Flores,
9 Plaintiff Larkin, and Plaintiff Martinez each, and \$5,000 to be paid by Defendant to Plaintiff
10 Moreno and Plaintiff Pineda each, out of the Gross Settlement Amount, to be reasonable and
11 appropriate (totaling \$50,000). The Class Representative Service Payments are to be paid
12 pursuant to the terms and provisions set forth in the Settlement Agreement.

13 a. The rationale for making enhancement payments is class representatives
14 should be compensated for the expense and risk they incurred in
15 conferring a benefit on the Class. Criteria courts consider include: (1) risk
16 to the class representatives in commencing suit; (2) notoriety and personal
17 difficulties; (3) amount of time and effort spent by the class
18 representatives; (4) duration of the litigation; and (5) personal benefit (or
19 lack thereof) enjoyed by class representatives.

20 b. The Court reviewed Plaintiffs' declarations outlining their involvement.
21 Given the risks inherent in the services as the class representatives,
22 duration of the case and time involved, and benefits created for the Class,
23 the Court approves the payment of the Class Representative Service
24 Payments of \$10,000 to Plaintiff Carlton, Plaintiff Flores, Plaintiff Larkin,
25 and Plaintiff Martinez each and \$5,000 to Plaintiff Moreno and Plaintiff
26 Pineda each.

27 ///

28 ///

1 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

2 The Court finds the Class Counsel Fees Payment of \$348,250, to be paid by Defendant to Class
3 Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. In addition, the
4 Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual
5 litigation costs incurred of \$16,074.87, to be paid by Defendant to Class Counsel out of the
6 Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid
7 pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not
8 be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
9 Class Counsel or any other counsel representing Plaintiffs or Class Members. Defendant shall
10 also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
11 incurred by Plaintiffs or Class Members in connection with or related in any manner to this
12 lawsuit, Settlement Agreement, settlement administration, Released Class Claims and Released
13 PAGA Claims.

- 14 a. The Court has an independent right and responsibility to review the Class
15 Counsel Fees Payment and only award so much as it determines
16 reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.*
17 (2004) 118 Cal.App.4th 123, 127-28.) The Class Counsel Fees Payment of
18 \$348,250 is thirty-five percent (35%) of the common fund created for the
19 benefit of the Class and is supported by use of the percentage-fee method.
20 (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.)
21 Considering the results achieved, financial risk undertaken, difficult nature
22 of this litigation, skills required, percentage fees award in previous and
23 other cases, and contingent fees charged in the marketplace, the Court
24 finds the Class Counsel Fees Payment is consistent with the marketplace,
25 is reasonable, and is approved.

26 ///

27 ///

28 ///

1 b. The Court reviewed the declaration of Douglas Han regarding the costs
2 expended in prosecuting this case. Under the terms of the Settlement,
3 Class Counsel may seek reimbursement of up to \$20,000 in litigation
4 costs. The Court finds Class Counsel expended \$16,074.87 in litigation
5 costs, and such costs were reasonable. The Court approves the payment of
6 the Class Counsel Litigation Expenses Payment of \$16,074.87 from the
7 common fund for the reimbursement of Class Counsel's litigation costs.

8 12. Administration Expenses Payment. The Court finds Administration Expenses
9 Payment of \$12,500, to be paid by Defendant to the Administrator out of the Gross Settlement
10 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
11 pursuant to terms and provisions set forth in the Settlement Agreement.

12 a. The Court reviewed the declaration of Desirae Burton from Simpluris,
13 Inc., the Administrator. The Court finds notice was provided to the Class
14 pursuant to the Preliminary Approval Order, constitutes the best
15 practicable notice to the Class, and satisfied due process. Thus, the Court
16 approves the payment of the Administration Expenses Payment of \$12,500
17 for the Administrator's services in administering the Settlement.

18 13. PAGA Penalties. The Court finds the PAGA Penalties of \$100,000, seventy-five
19 percent (75%) of which (\$75,000) will be paid to the LWDA out of the Gross Settlement
20 Amount and twenty-five percent (25%) of which (\$25,000) will be distributed to Aggrieved
21 Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Penalties is to be
22 paid pursuant to the terms and provisions set forth in the Settlement Agreement.

23 14. Funding the Settlement. Defendant shall fully fund the Gross Settlement Amount,
24 and also fund the amount necessary to fully pay Defendant's share of payroll taxes, by
25 transmitting the funds to the Administrator no later than fourteen (14) days after the Effective
26 Date. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the
27 Administrator will mail checks for all settlement payments.

28 ///

1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
3 Settlement was the product of arm's-length negotiations following extensive litigation,
4 discovery, and exchange of documentation. The negotiations were facilitated with the aid of Lisa
5 Klerman, an experienced and well-respected mediator.

- 6 a. The fairness of the Settlement is demonstrated by there being no
7 objections to and no requests for exclusion from the Settlement.
- 8 b. The fairness of the Settlement is further illustrated by the gross *average*
9 Individual Class Payment being approximately \$668.26, and the gross
10 *highest* Individual Class Payment being about \$1,623.76.

11 16. Uncashed Checks. Participating Class Members and Aggrieved Employees must
12 cash or deposit their settlement checks within one hundred eighty (180) days after the checks are
13 mailed by the Administrator to them. Uncashed settlement checks will be canceled and paid to
14 the California Controller's Unclaimed Property Fund.

15 17. Modification of Settlement Agreement. The Participating Class Members are
16 hereby authorized to agree to and adopt amendments to or modifications of the Settlement
17 Agreement by an express written instrument signed by all Parties or their representatives and
18 approved by the Court. Such amendments or modifications shall be consistent with this Order
19 and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

20 18. Final Accounting and Compliance. The Court sets a nonappearance case review
21 for July 4, 2024 in Department C-67. Within five (5) court days before this hearing, Plaintiffs
22 shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the
23 compliance status report shall specify the total amount paid to Participating Class Members and
24 the residual of the unclaimed settlement funds that will be paid to the entity identified as the
25 recipient of such funds in the Settlement Agreement.

26 ///

27 ///

28 ///

1 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
2 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
3 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
4 and for any other necessary purpose, including, without limitation:

- 5 a. enforcing the terms and provisions of the Settlement and resolving any
6 disputes, claims, or causes of action in this lawsuit that, in whole or in
7 part, are related to or arise out of the Settlement or this Order and
8 Judgment;
9 b. entering such additional orders as may be necessary or appropriate to
10 protect or effectuate this Order and Judgment approving the Settlement,
11 and permanently enjoining Plaintiffs from initiating or pursuing related
12 proceedings, or to ensure the fair and orderly administration of the
13 Settlement; and
14 c. entering any other necessary or appropriate orders to protect and effectuate
15 this Court's retention of continuing jurisdiction.

16 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
17 Class Counsel Litigation Expenses Payment, and Class Representative Service Payments is
18 GRANTED. The Administrator is directed to carry out the terms of the Settlement Agreement
19 forthwith.

20 ///

21 ///

22 ///

1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8 IT IS SO ORDERED.

9
10 DATED: 11-6-23


11 HONORABLE EDDIE C. STURGEON
12 SUPERIOR COURT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mluna@justicelawcorp.com

On November 7, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Nicholas Carlton, et al. v. Waxie's Enterprises, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-828848-21**
Court Case No.: 37-2021-00026158-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on November 7, 2023, at Pasadena, California.



Madison Luna