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FILED
Clerk of the Superior Court

APR 17 2023

By H. Chenn
DEPUTY CLERK

8 SUPERIOR COURT OF CALIFORNIA
9 FOR THE COUNTY OF SOLANO

11 JOSEPH CRISTOBAL, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

16 BAT RESIDENTIAL SERVICES, INC., a
17 California Corporation; and DOES 1 to 100,
inclusive,

18 Defendants.

Case No. FCS056331

CLASS ACTION

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

Date: March 28, 2023

Time: 9:30 a.m.

Dept.: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set

~~[PROPOSED]~~ ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on March 28, 2023, at 9:30 a.m., in Department 22 before the
4 Honorable Alesia F. Jones, presiding. Named Plaintiff Joseph Cristobal ("Plaintiff") filed this putative
5 class action on April 5, 2021. The operative Complaint alleges that Defendant BAT Residential
6 Services, Inc. ("Defendant") violated California law by failing to pay overtime wages, failing to
7 provide rest periods, failing to provide accurate wage statements, failing to pay all final wages, failing
8 to pay sick time, and engaging in unfair competition. Plaintiff has also alleged Defendant is liable for
9 civil penalties under the Private Attorneys General Act ("PAGA") based on these violations. Plaintiff
10 sought attorneys' fees and costs as part of this Action. Defendant denied all of Plaintiff's claims and
11 denied that this case was appropriate for class treatment. No class has been certified. The class action
12 settlement was preliminarily approved by this Court on January 10, 2023.

13 The parties have agreed to settle the class and PAGA claims. Defendant and its principals,
14 Dalmacio Temporal Lete ("Lete") and Elena Monette Herting ("Herting"), will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff's Motion for Final Approval of Class
19 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Settlement,
20 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

21 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **REPRESENTATIVE; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under the California Code of Civil Procedure and related case law:

25 All non-exempt employees who have worked, or continue to work, for
26 BAT Residential Services, Inc. in California from April 5, 2017 up to
September 25, 2022.

27 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
28 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

1 The Court finds that the definition of Class Members meets the ascertainability and numerosity
2 requirements because the parties can identify with a matter of certainty, based on payroll records,
3 individuals who fall within the definition and the number of Class Members would make joinder
4 impractical. The commonality and predominance requirements are met for settlement purposes since
5 there are questions of law and fact common to Class Members. The common questions of law or fact in
6 this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above by 1)
7 failing to incorporate the value of non-discretionary bonuses into Class Members' regular rates of pay
8 for the purpose of calculating overtime premiums and paid sick time; 2) paying Class Members two
9 different rates of pay in the same workweek and failing to use the weighted average method to calculate
10 putative class members' regular rates of pay; 3) requiring Class Members to remain on duty during rest
11 periods; and 4) failing to include the correct address on wage statements issued to Class Members. The
12 waiting time, unfair competition and PAGA claims derive from these violations. Plaintiff also alleged
13 derivative wage statement violations for failing to correctly itemize gross and net wages earned and all
14 applicable hourly rates in effect with the corresponding number of hours worked at each rate.
15 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
16 settlement purposes is also satisfied since the claims of the Class Representative is based on the same
17 facts and legal theories as those applicable to the class members.

18 The Court also finds that certifying the settlement class is required to avoid each Class Member
19 from litigating similar claims individually. This settlement will achieve economies of scale for Class
20 Members with relatively small individual claims and conserve the resources of the judicial system.

21 The Court finds that Plaintiff Joseph Cristobal and Plaintiff's counsel, Galen T. Shimoda,
22 Justin P. Rodriguez, and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
23 representatives of the settlement class. The Court appoints them as Class Representative and Class
24 Counsel, respectively.

25 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

26 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
27 A. The Court finds that the Agreement, which includes a total maximum gross payment of \$250,000,
28 falls within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court

1 also acknowledges that Class Members were able to object to the settlement through the administration
2 process and at a fairness hearing. No such objections were made by the class members and no class
3 members opted out of the settlement.

4 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
5 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
6 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
7 \$250,000 Gross Settlement Amount.

8 The Court orders that Plaintiff Joseph Cristobal will receive \$15,000 as a Class Representative
9 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
10 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

11 The Court orders and approves ILYM Group, Inc. to act as the Claims Administrator in this case.
12 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are stated by the
13 Administrator to be \$7,000. The difference between the actual cost of the Claims Administrator and the
14 originally allocated amount of \$10,000 will be added to the Net Settlement Amount.

15 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
16 because there is a sufficiently identifiable class of beneficiaries (*i.e.*, Class Members), the benefits can
17 be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
18 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
19 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
20 *v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
21 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
22 thirty five percent (35%) of the Gross Settlement Amount, *i.e.*, \$87,500, to be appropriate compensation
23 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
24 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
25 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
26 the course of this case, which included potential loss at summary judgment, certification, and/or trial
27 proceedings. Additionally, the Court orders that \$7,803.92 of the settlement proceeds will be paid to
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1 Class Counsel for reasonable costs incurred in this case. The difference between the actual costs
2 incurred and the originally allocated amount of \$10,000 shall be added to the Net Settlement Amount.

3 The Court approves of the \$10,000 PAGA Payment, which shall be paid from the Gross
4 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
5 claims. Seventy-five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
6 Development Agency ("LWDA") and twenty-five percent (25%) will be paid to Aggrieved Employees
7 on a pro rata basis as described in the Agreement. The Court also finds that the Agreement provides a
8 recovery that creates an effective substantial deterrent to any potential future non-compliance, furthering
9 the purpose of the Labor Code and LWDA.

10 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
11 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
12 donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion
13 of the Gross Settlement Amount will revert to Defendant for any reason.

14 The releases and waivers for Class Members who did not opt out of being bound by the
15 Agreement (*i.e.*, Qualified Claimants), Aggrieved Employees, and the Class Representative are also
16 approved by the Court as set forth in the Agreement.

17 **III. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
18 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

19 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
20 Exhibit A to the Declaration of Cassandra Polites, fairly and adequately advised Class Members of the
21 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
22 of workweeks worked during the Class Period, their estimated pro rata share of the Net Settlement
23 Amount, how to participate in the settlement, how to file documentation in opposition to the proposed
24 settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of
25 Settlement and distribution of such notice by first class mail to each identified Class Member at his or
26 her most recent address based on a National Change of Address database search from the Class
27 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
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1 returned as "undeliverable" or "not at this address" comported with all constitutional requirements,
2 including those of due process.

3 IV. IMPLEMENTATION SCHEDULE

4 Accordingly, with good cause shown, the Court hereby approves and orders that the following
5 implementation schedule be adhered to:

6 7 8 9 10	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
11 12	Last day for Defendant, Lete, and Herting to fund settlement	Within 21 calendar days after the Effective Date
13 14 15 16 17	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after funding of the settlement
18 19	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
20 21 22	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
23 24	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

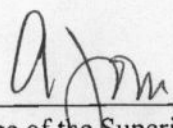
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27 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
28 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the

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Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement.

IT IS SO ORDERED.

Date: 4-17-23

By: 
Judge of the Superior Court