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SUPERIOR COURT OF CALIFORNIA

April 4, 2023

COUNTY OF TEHAMA, CIVIL DIVISION

KEVIN HARRIGAN, CLERK OF THE COURT

BY *Lane Harris*, DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TEHAMA**

MELISSA FURMAN; JUSTIN
BORGENSEN, individually and on behalf
of all others similarly situated,

Plaintiffs,
vs.

ONP SNOW MOUNTAIN, LLC, a
Delaware limited liability company; and
DOES 1 to 10, inclusive,
Defendants.

Case No.: 21CI000138

**~~[PROPOSED]~~ FINAL APPROVAL
ORDER AND JUDGMENT OF
CLASS ACTION SETTLEMENT**

1 This matter is before the Court on the motion for final approval of a class action
2 settlement ("Settlement") between individual and representative Plaintiffs Melissa Furman
3 and Justin Borgersen ("Plaintiffs") and Defendant ONP Snow Mountain, LLC ("Defendant")
4 (collectively the "Parties"), as set forth in the Settlement Agreement ("Agreement"), attached
5 as Exhibit 1, and a good faith determination pursuant to Cal. Code Civ. Proc. § 877.6.

6 By the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action
7 Settlement, Approving Form and Manner of Notice, and Scheduling Final Approval and Fairness
8 Hearing ("Preliminary Approval Order"), the Court: 1) granted preliminary approval of the
9 Settlement; 2) ordered that notice of the Settlement be disseminated to Class Members, as directed
10 therein; and 3) scheduled a final approval and fitness hearing ("Fairness Hearing") for April 4,
11 2023.

12 On April 4, 2023, the Parties appeared before the Court for the Fairness Hearing, and
13 an opportunity to be heard was given to all persons requesting to be heard. The Court has
14 reviewed and considered all the pleadings filed in connection with the instant matter and all
15 arguments and evidence presented concerning the Settlement.

16 The matter of the Settlement and proposed Agreement having been duly noticed and
17 fully considered by the Court, **IT IS HEREBY ADJUDGED, ORDERED, AND**
18 **DECREED:**

19 **A. Plaintiffs' Motion for Final Approval of the Class Action Settlement is**
20 **Granted**

21 1. This Court has jurisdiction over the above-captioned action, Plaintiffs, Class
22 Members, Defendant, and any party to any agreement that is part of or related to the
23 Agreement.

24 2. Capitalized terms used in this Order have the meanings and/or definitions
25 ascribed to them in the Agreement.

26 3. The Court finds that the applicable requirements of California Code of Civil
27 Procedure section 382 have been satisfied with respect to Class Members and the Settlement.
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1 4. Solely for purposes of effectuating the Settlement and as stated in the
2 Preliminary Approval Order, the Court hereby conditionally certifies the following Class for
3 Settlement purposes only: “all individuals who were employed by Defendant ONP Snow
4 Mountain, LLC as a non-exempt employee in California during the Class Period.”

5 5. The Court finds and determines that, for settlement purposes, the Class Period
6 encompasses the period between November 1, 2019 and May 2, 2022, as agreed upon by the
7 Parties and specified in the Court-approved Notice of Class Action Settlement.

8 6. The notice mechanisms implemented pursuant to the Agreement and as
9 approved by this Court in the Preliminary Approval Order, were reasonably calculated under
10 the circumstances to apprise Class Members of the pendency of the Action and all material
11 elements of the proposed Settlement, as well as their opportunity to object to or comment on
12 the Settlement and to appear at the Fairness Hearing. The Class Notice was reasonable and
13 provided due, adequate, and sufficient notice to all Class Members and complied fully with
14 the laws of the State of California, due process, and any other applicable statutes or rules. A
15 full and fair opportunity has been afforded to Class Members to participate in the Fairness
16 Hearing, and all Class Members and other persons wishing to be heard have been heard. No
17 Class Members asserted Objections to the Settlement.

18 7. Accordingly, the Court determines that all members of the Class are bound by
19 this Judgment, Final Order, and Decree. No Class Members requested exclusion from the
20 Class.

21 8. The Court hereby grants final approval to the Settlement and finds that it is fair,
22 reasonable, and adequate and in the best interests of the Class.

23 9. The Settlement is entitled to a presumption of reasonableness, as it was
24 negotiated at arms’ length by experienced and well-prepared Class Counsel. *7-Eleven Owners*
25 *for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2001).

26 10. Even apart from this presumption, the Court has determined that the Settlement
27 is fair, reasonable, and adequate as measured by the relevant criteria. *See Dunk v. Ford Motor*
28 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (listing and applying factors). Prior to entering into

1 the Agreement, Class Counsel, who have extensive experience in class action and wage and
2 hour litigation, conducted reasonable discovery and investigation to assess the extent of
3 Defendant's exposure and liability. Class Counsel were thus well-informed at mediation
4 about the potential risks of continued litigation with respect to potential damages for absent
5 Class Members.

6 11. The case is not yet set for trial, and continued litigation, including any
7 necessary post-trial appeal, presents significant risks to the Class.

8 12. The Court finds that Six Hundred Fifty Thousand Dollars (\$200,000) in cash is
9 fair, reasonable, and adequate given the claims and defenses at issue, the number of Class
10 Members, and the risks of continued litigation.

11 13. In addition, the reaction of Class Members strongly favors approval of the
12 Settlement. The Class consists of 103 current and former non-exempt employees who worked
13 for Defendant in California during the Class Period. No Class Members objected to the
14 Settlement.

15 14. The plan for administration of the Settlement, as approved in the Preliminary
16 Approval Order and described in the Class Notice sent to all Class Members, is hereby
17 approved as fair, reasonable, and adequate. Pursuant to the Agreement and Class Notice,
18 funds are to be disbursed from the Settlement Fund as follows:

- 19 i. Attorneys' Fees of \$66,666.67 and Attorneys' Costs of \$10,155.38 shall be
20 paid to Class Counsel;
- 21 ii. A Service Award in the amount of Ten Thousand Dollars (\$10,000) shall
22 be paid to Plaintiff Justin Borgersen and in the amount of Twenty Thousand
23 Dollars (\$20,000) shall be paid to Plaintiff Melissa Furman;
- 24 iii. An Individual Settlement Payment shall be paid to each Participating Class
25 Member in an amount confirmed by the Settlement Administrator pursuant
26 to Section 4 of the Agreement;

- 1 iv. An Individual PAGA Payment shall be paid to each Aggrieved Employee
2 in an amount confirmed by the Settlement Administrator pursuant to
3 Section 4 of the Agreement;
- 4 v. Any Individual Settlement Payments and Individual PAGA Payments that
5 remain uncashed one hundred eighty (180) days after mailing shall be paid
6 to the California Controller's Unclaimed Property Fund in the name of the
7 Class Member; and
- 8 vi. Settlement Administration Costs shall be paid to Rust Consulting in the
9 amount of \$11,000.

10 15. Based on the foregoing findings, the Agreement is finally approved and made
11 a part of this Judgment as if fully set forth herein and shall have the full force and effect of
12 an Order of this Court. The Parties shall implement the Settlement according to its terms.

13 16. Accordingly, the Court hereby orders and declares (i) the Agreement is binding
14 upon all Parties and Class Members who did not timely exclude themselves from the
15 Settlement ("Participating Class Member"); (ii) the Agreement shall be preclusive in all
16 pending and future lawsuits or other proceedings against Defendant arising from the facts
17 alleged in these Actions; and (iii) the Agreement and this Order shall have *res judicata* and
18 preclusive effect in all pending and future lawsuits or other proceedings maintained against
19 Defendant by or on behalf of Plaintiff or any other Participating Class Member, as well as
20 each of their heirs, executors, administrators, successors and assigns. As of the Effective Date,
21 the Agreement shall be Participating Class Members' exclusive remedy against Defendant for
22 satisfaction of all Released Claims.

23 17. The Court finds further that Plaintiffs, acting on behalf of themselves, the
24 Aggrieved Employees, and the State of California, by operation of this Order and Judgment
25 hereby releases and forever discharges Defendant and the Released Parties from any and all
26 Released PAGA Claims as defined in the Agreement. The Court further finds that the
27 foregoing release shall be binding on Plaintiffs and the State of California, and shall bar any
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1 claim under PAGA brought by any person, including the Aggrieved Employees, on behalf of
2 the State of California as to the Released PAGA Claims and the Released Parties.

3 18. The Court hereby incorporates the release set forth in the Agreement. Thus, the
4 Released Parties are and shall be released and forever discharged from all manner of the
5 Released Class Claims and Released PAGA Claims as defined in the Agreement. Except for
6 enforcing the Agreement, each Releasor hereby covenants and agrees that he or she shall not,
7 hereafter, seek to establish liability against any Released Party based on any Released Claim.
8 Should any Releasor breach this covenant not to sue, the Released Parties may seek equitable
9 and legal remedies. Without in any way limiting the definition of Released Parties, ONP Snow
10 Mountain, LLC is expressly a Released Party.

11 19. Nothing in this Order shall be construed to expand Defendant's obligations
12 under the Agreement or impose obligations on Defendant different from than those contained
13 in the Agreement.

14 **B. Reservation of Jurisdiction**

15 21. The Parties have submitted to this Court's exclusive and continuing jurisdiction
16 after entry of this Judgment and Final Order, and the Court expressly reserves exclusive and
17 continuing jurisdiction over the Settlement, including administration, consummation, and
18 interpretation of the Agreement. The Court thus retains exclusive and continuing jurisdiction
19 over the Parties to enforce the terms of this judgment pursuant to C.C.P. § 664.6.

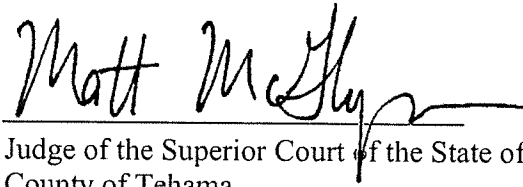
20 **C. Entry of Final Judgment**

21 22. The Court, in the interests of justice, there being no just reason for delay, directs
22 the Clerk of the Court to enter this Judgment and Final Approval Order and hereby decrees
23 that upon entry it shall be deemed a Final Judgment with respect to all Released Claims
24 asserted by Releasors against the Released Parties.

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IT IS SO ORDERED.

Dated: 4/4/2023



Judge of the Superior Court of the State of California,
County of Tehama