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BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA

08/25/2022

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NEVADA

DONALD E. DELAHUNT, on behalf of himself
and others similarly situated, and the general public,

Plaintiff,

v.

RALEY'S, a California corporation; and DOES 1-
50, inclusive,

Defendants.

CLASS ACTION

Case No. CU21-085853

Hon. Thomas M. Anderson, Dept. 6

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT, AWARD OF
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD TO THE
CLASS REPRESENTATIVE

Date: August 12, 2022

Time: 10:00 a.m.

Complaint Filed: September 29, 2021

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, AWARD
OF ATTORNEYS' FEES, COSTS, AND ENHANCEMENT AWARD TO THE CLASS REPRESENTATIVE

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BY FAX

1 The parties have submitted their Joint Stipulation of Settlement for Class Action and
2 Representative Action ("Settlement Agreement"), which this Court preliminary approved in its June
3 10, 2022 order ("Preliminary Approval Order"). In accordance with the Preliminary Approval Order,
4 Class Members have been given adequate notice of the terms of the Settlement Agreement and their
5 right to participate in, object to, or opt-out of the settlement.

6 Having received and considered the Settlement Agreement, the Motion for Final Approval of
7 Class Action and PAGA Settlement, the Motion for Final Approval of the Settlement Class Counsel's
8 attorneys' fees and reimbursement of costs and for an incentive award for the Settlement Class
9 Representative, and the evidence and argument received by the Court at the Final Approval Hearing on
10 August 12, 2022, the Court rules as follows:

11 There are two motions before the Court: (1) Plaintiffs' and Defendants' joint motion for
12 final approval of class action and PAGA settlement; and (2) Plaintiffs' motion for award of
13 attorney fees, costs, class representative incentive payment, and settlement of administrator fees.
14 The Court grants both motions following required hearing under Ca. Rules of Court, 3.769(g).

15 *Settlement Class Certification:*

16 Ca. Code of Civil Procedure § 382 has two minimum requirements to sustain a class
17 action: (1) an "ascertainable" class; and (2) a well-defined "community of interest" in questions
18 of law and fact. (Dunk, supra, 48 Cal.App.4th at 1806; see also Sav-On Drug Stores, Inc. v.
19 Superior Court (2004) 34 Cal.4th 319, 326.)

20 As to the first element, for a class to be "ascertainable," it must be sufficiently numerous
21 such that it would be impractical to bring them all before the Court. (Richmond v. Dart
22 Industries, Inc. (1981) 29 Cal.3d 462, 470 [class action suits are authorized "when the parties are
23 [so] numerous ... it is impracticable to bring them all before the court"].) . It also requires class
24 members to be readily and easily identified. (Archer v. United Rentals, Inc. (2011) 195
25 Cal.App.4th 807, 828 [class definition must be precise such that it is possible "to give adequate
26 notice to class members"].)

1 The second element – the existence of a well-defined “community of interest” – embodies
2 three separate factors: (1) predominant common questions of law or fact; (2) class representative
3 has claims or defenses typical of class members; and (3) class representative can adequately
4 represent the class. (Richmond, supra, 29 Cal.3d at 470.) The standards for satisfying this
5 standard vary based on whether the class being certified is a settlement class or a litigation class.
6 A settlement class, which is at issue here, is held to a lower standard of scrutiny. (Global
7 Minerals & Metals Corp. v. Superior Court (2003) 113 Cal.App.4th 836, 859; Dunk, supra, 48
8 Cal.App.4th at 1807.)

9 Given the foregoing, the Court finds, based on the pleadings and declarations and exhibits
10 submitted in support thereof, that the class is ascertainable and consists of a well-defined
11 “community of interest.” This action is properly certified as class action on behalf of the
12 settlement class.

13 *Final Approval of the Settlement*

14 As to the motion for final approval, the Court finds that the proposed settlement is “fair,
15 reasonable, and adequate.” As such, the Court grants the motion as prayed. No interested party
16 was present at the hearing to state any opposition thereto.

17 In coming to that conclusion, the Court has considered the factors outlined in Dunk v.
18 Ford Motor Co. (1996) 48 Cal.App.4th 1794, including, but not limited to: (1) the strength of
19 plaintiffs’ case; (2) the risk, expense, complexity, and the likely duration of further litigation; (3)
20 risk of maintaining class action status through trial; (4) amount offered in settlement; (5) extent
21 of discovery completed and the stage of the proceedings; and (5) the experience and views of
22 counsel; (6) the presence (or lack thereof) of a governmental participant; and (7) the reaction of
23 the class members to the proposed settlement. (Id. at 1803.) Considering the above-listed factors
24 as supported by pleadings and the numerous declarations of counsel attesting to the same, the
25 Court finds that the factors strongly support the conclusion that the proposed settlement is “fair,
26 reasonable, and adequate.”
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1 The Court further finds, based on the declarations submitted, that the settlement has
2 been reached through arm's-length negotiation, investigation and discovery are sufficient to
3 allow the parties to act intelligently, counsel is experienced in similar litigation, and the
4 percentage of objections is small. Given the foregoing, the presumption of fairness articulated in
5 Dunk is applicable. (Dunk, supra, 48 Cal.App.4th at 1803.)

6 Further, as to these points, the Parties have exchanged discovery, including wage and
7 payroll data, thereby allowing them to assess the value of the claims and assess various claims
8 and defenses, and therefrom arrive at a reasonable settlement value. Further, counsel for the
9 Plaintiffs, who has considerable experience in this type of litigation, is in concurrence with this
10 request. The Court also notes that only a single objection has been filed – along with only six
11 additional class members opting out – out of a class of fourteen hundred seventy-five (1475)
12 members. Finally, no interested party was present at the hearing to state any opposition thereto.
13 Considering all of the foregoing, the Court ~~tentatively~~ concludes that the proposed settlement is
14 fair and reasonable.

15 *Motion for approval of attorney's fees, costs, and incentive payment*

16 As to Plaintiffs' counsels' motion for approval of attorneys' fees, costs, incentive payment,
17 and settlement administrator fees, the Court is also grants it as prayed, subject to the hearing
18 and inquiry conducted under Ca. Rules of Court, Rule 3.769(g) noted above. As to Plaintiffs'
19 attorney's fees specifically, as argued by Plaintiffs, whether the same are calculated under the
20 lodestar or percentage method, they are reasonable given the current litigation. (See Chavez v.
21 Netflix, Inc. (2008) 162 Cal.App.4th 43.) Both methods remain permissible, and it is in the trial
22 court's sound discretion as to which method to employ. (Laffitte v. Robert Half Internat. Inc. (1
23 Cal.5th 480, 506.) If using the percentage method, the court may or may not choose to utilize a
24 lodestar cross-check or "other means to evaluate the reasonableness of a requested percentage
25 fee. (Id.)

26 Since the value of the class recovery is easily ascertainable and fixed at the time of this
27 Court's consideration of the motion, the Court proceeds to consider reasonableness by virtue of
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1 the percentage method. (Id. at 503; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 49.)
2 In accordance with the direction provided in *Laffitte*, a lodestar cross-check will be employed.
3 As a percentage of gross recovery, Plaintiffs' attorneys' fees amount to approximately 23.3% of
4 the total recovery. (See *Chavez*, supra, 162 Cal.App.4th at 67, fn. 11 ["empirical studies show
5 that ... fee awards in class actions average around one-third of the recovery"].) This amount is
6 reasonable and consistent with the present litigation. The same is further confirmed with a cross-
7 check of the applicable lodestar value of 2.2, which is well within the range commonly approved
8 by our courts. (See e.g., *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512
9 [finding a multiplier of 2.52 "fair and reasonable"].) Given the foregoing, the Court finds the
10 attorneys' fee request reasonable.

11 As regards all other requested fees, they are also supported in the pleadings and
12 declarations, reasonable in their amounts, and the legal basis for granting the same is well-
13 established in both statutory and case law.

14 **IT IS ALSO HEREBY ORDERED THAT:**

15 1) This Order incorporates by reference the definitions in the Settlement Agreement,
16 attached as Exhibit "A" to the Declaration of Caitlyn M. Crisp, and all terms defined therein shall have
17 the same meaning in this Order as set forth in the Settlement Agreement;

18 2) The Settlement Class covered by this Order is defined as: All persons the Defendant
19 employed in the State of California as non-union exempt and non-exempt employees, who had the
20 primary assignment to work at the locations of any stores operated by Defendant, and who received
21 vacation wages calculated under the Prior Union Calculation Formula, which resulted in an
22 underpayment of vacation wages, during the period of September 29, 2017 to June 30, 2021;

23 3) Pursuant to this Court's Preliminary Approval Order, a Notice of Class Action Settlement
24 "Notice Packet", Exhibit "1" to this Order, was sent to each known Class Member by first-class mail.
25 These papers informed Class Members of the terms of the settlement, their right to participate in, object
26 to, or opt-out of the settlement to pursue their own remedies. A Correction Notice postcard, Exhibit "2"
27 to this Order, was sent to each known Class Member to inform them of the correct date and time of the
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1 hearing on the Joint Motion for Final Approval of Class Action and PAGA Settlement. One Class
2 Member filed a written objection to the settlement as part of the notice process. No interested party was
3 present at the Final Approval Hearing to state any opposition thereto.

4 4) The names of the six out of 1,475 Class Members who submitted a valid written request
5 to opt-out of the Settlement are listed below:

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First Name	Last Name
Linda	Reichlin
Nicholas	Serna
Sawaran	Kaur
Andrea	Babcock
Tyler	Van Orman
Denise	Burch

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12 5) The Court finds and determines that this notice procedure afforded adequate protections
13 to Class Members and provides the basis for the Court to make an informed decision regarding approval
14 of the settlement based on the responses of the Class Members. The Court finds and determines that the
15 notice provided in this case was the best notice practicable, which satisfied the requirements of law and
16 due process.

17 6) The Court finds and determines that the proposed Settlement Class, as defined in the
18 Settlement Agreement, meets all the legal requirements for class certification, and it is hereby ordered
19 that the Settlement Class is finally approved and certified as a class for purposes of settlement of this
20 action.

21 7) The Court further finds and determines that the terms of the settlement are fair,
22 reasonable, and adequate to the Settlement Class and to each Class Member. The settlement adequately
23 compensates Plaintiff and members of the Settlement Class for all violations that were alleged, in the
24 Class Action Complaint and the First Amended PAGA Complaint and as stated in the Releases (as
25 defined in the Settlement Agreement). Accordingly, the Class Members (other than any Excluded Class
26 Members identified in ¶ 4 above) shall be bound by the Settlement Agreement, the settlement is ordered
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1 finally approved, and all terms and provisions of the Settlement Agreement should be and hereby are
2 ordered to be consummated.

3 8) The Court finds and determines that the payments to be made to the Class Members as
4 provided in the Settlement Agreement are fair and reasonable, The Court hereby grants final approval to
5 and orders the payment of those amounts to be made to the Class Members out of the Gross Settlement
6 Amount of Three Hundred and Forty Six Thousand Dollars (\$346,000.00) in accordance with the terms
7 of the Settlement Agreement.

8 9) The Court hereby grants and approves the application presented by the Class Counsel
9 David Spivak of The Spivak Law Firm and Craig Diamond of Diamond Baker Mitchell Cole, LLP for
10 an award of attorneys' fees in the amount of \$85,000, which is just under 25% of the Gross Settlement
11 Amount.

12 10) The Court hereby grants and approves the application presented by Class Counsel for an
13 award of costs in the amount of \$2,959.61 to be paid in accordance with the terms of the Settlement
14 Agreement.

15 11) The Court hereby grants and approves the application presented by the Class
16 Representative for an Enhancement Award in the amount of Ten Thousand Dollars (\$10,000) for
17 Plaintiff Donald E. Delahunt, to be paid in accordance with the terms of the Settlement Agreement.

18 12) The Court hereby approves the allocation of Four Thousand Dollars (\$4,000.00),
19 pursuant to the California Labor Code sections 2698, et seq., the California Labor Code Private
20 Attorneys General Act of 2004 ("PAGA"), for the release of Settlement Class Members' PAGA claims.
21 Three Thousand Dollars (\$3,000.00), representing seventy-five percent (75%) shall be paid to the
22 California Labor and Workforce Development Agency ("LWDA") and the remaining \$1,000.00, which
23 represents twenty-five percent (25%), to become part of the Net Settlement Amount and distributed to
24 the Participating Class Members as described in the Settlement Agreement.

25 13) The Court hereby grants and approves the application for payment of costs of
26 administration of the Settlement in the amount Thirteen Thousand Dollars (\$13,000.00) for fees and
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1 expenses of Simpluris Class Action Settlement Administration, the Settlement Administrator approved
2 by the Court to be paid from the Gross Settlement Amount ("Settlement Administration Costs").

3 14) Upon completion of administration of the Settlement, the Settlement Administrator will
4 provide written certification of such completion to the Court and counsel for the parties within ten (10)
5 business days of such completion.

6 15) As of the Effective Date of the Settlement Agreement, and except as to such rights or
7 claims as may be created by the Settlement Agreement, each Class Member and Aggrieved Employee,
8 and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns,
9 trustees, spouses, or guardians, will release each of the Released Parties of and from any and all known
10 and unknown claims, rights, demands, charges, complaints, causes of action, damages, penalties,
11 statutory, civil, administrative, or local penalties of any nature, interest, liquidated damages, attorneys'
12 fees, costs, obligations, or liability of any and every kind for the Class Period, arising from or related to
13 the claims asserted, or that could have been asserted based on the facts alleged, in the Action and the
14 LWDA letter for PAGA claims including civil penalties under California Labor Code section 2698 and
15 2699 et seq. due to any alleged Labor Code violations including Labor Code section 227.3 and claims
16 that derive therefrom, under Labor Code sections 200, 201, 202, 203, 204, 226, and 226.3. However,
17 this release of claims and the court order granting approval thereof will not operate to release or limit
18 claims, damages, penalties, or other monetary relief, on an individual, class, or PAGA representative
19 basis, for claims unrelated to vacation pay, for which a remedy is sought under Labor Code §§ 201, 202,
20 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802,
21 2810.5 and Industrial Welfare Commission Wage Orders 4- 2001 and 7-2001, and any derivative civil
22 penalties under PAGA, sought by Joyce Dempsey in *Joyce Dempsey v. Raley's*, Yolo County Superior
23 Court Case No. CV2021-1532 and United States District Court, Eastern District of California, Case No.
24 2:21-CV-02300 and sought by Joyce Dempsey and Sylvia Redding in LWDA-CV-838148-21, LWDA-
25 CV-838319-21, and *Joyce Dempsey, et al. v. Raley's*, Sacramento County Superior Court Case No. 34-
26 2021-00308264 and United States District Court, Eastern District of California, Case No. 2:21-CV-
27 02354. However, nothing in this Agreement shall prohibit Defendant from alerting a court to any prior
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1 settlement of wage and hour claims involving employees that has already received approval from the
2 Court. Defendant shall raise such prior settlements only in the context of showing its good faith, to the
3 extent this may be considered by a court, in determining the amount of any discretionary penalties.

4 16) The parties are hereby ordered to comply with the terms of the Settlement Agreement.

5 17) The Court approves the named plaintiff; Donald E. Delahunt, as Class Representative.

6 18) The Court approves David Spivak of the Spivak Law Firm as Class Counsel and Craig
7 Diamond of Diamond Baker Mitchell Cole, LLP.

8 19) The Court approves Simpluris Class Action Settlement Administration as the Class
9 Administrator.

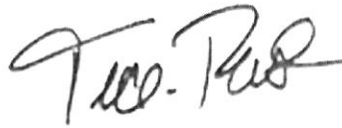
10 20) Notice of entry of this Order and Judgment shall be given to the Class Members by
11 posting a copy of this Order and Judgment on Simpluris, Inc.'s website for a period of at least ninety
12 (90) calendar days after the entry of this Order and Judgment. Individualized notice is not required.

13 21) The Final Accounting hearing is set for Friday, March 17, 2023 at 10:00 a.m. in
14 Department 6.

15 22) Without affecting the finality of this Final Order in any way, this Court retains
16 jurisdiction pursuant to California Rules of Court, Rule 3.769(h), and C.C.P. §664.6 of all matters
17 relating to the interpretation, administration, implementation, effectuating and enforcement of this Order
18 and the Settlement Agreement and judgment for all purposes.

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20 IT IS SO ORDERED.

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22 Dated: 08/24/2022

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HONORABLE ~~THOMAS A. ANDERSON~~
S. Robert Tice-Raskin

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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Bl, Ste 900, Sherman Oaks, CA 91403.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Tuesday, August 23, 2022, I served the foregoing document described as [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, AWARD OF ATTORNEYS' FEES, COSTS, AND ENHANCEMENT AWARD TO THE CLASS REPRESENTATIVE on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

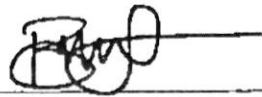
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XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address breck@spivaklaw.com or boyama@spivaklaw.com.

EXECUTED on Tuesday, August 23, 2022, at Los Angeles, California.

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


BRECK OYAMA