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FILED
Superior Court of California
County of Sacramento
05/02/2024
T. Shaddix, Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO – GORDON D. SHABER COURTHOUSE**

11 KHAMTANH PHAKHAILATHVONE,
12 individually, and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 vs.

16 ORANGE CRUSH ATHLETICS
CORPORATION, a California corporation;
17 WESTERN STATES WASTE, LLC, a limited
liability company; NORTECH WASTE, LLC, a
18 limited liability company; and DOES 1 through
10, inclusive,

19 Defendants.
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Case No. 34-2021-00308178-CU-OE-GDS

CLASS AND REPRESENTATIVE ACTION

[Hon. Jill H. Talley, Dept. 23]

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

[Filed with Plaintiff's Notice of Motion and
Memorandum of Points and Authorities,
Declarations of Kane Moon, Plaintiff, and
Lisa Pavlik, and [Proposed] Judgment]

FINAL APPROVAL HEARING:

Date: April 26, 2024

Time: 9:00 a.m.

Dept.: 23

Complaint Filed: September 17, 2021

Trial Date: Not Set

~~PROPOSED~~ FINAL APPROVAL ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On December 8, 2023, the Court entered an Order which granted Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement, granted conditional class certification, approved the format of the Class Notice, and set a Final Approval Hearing (the "Preliminary Approval Order"), thereby preliminarily approving a settlement of the above-entitled action (the "Action") that was reached between Plaintiff Khamtanh Phakhailathvone ("Plaintiff") and Defendants Orange Crush Athletics Corporation d/b/a Western State Waste, LLC ("Orange Crush") and Nortech Waste, LLC ("Nortech") (collectively, "Defendants") (together with Plaintiff, the "Parties"), in accordance with the Parties' Class and PAGA Representative Action Settlement Agreement and Class Notice (the "Settlement"). The Settlement was attached as **Exhibit 1** to the Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement that was filed on October 6, 2023.

The Court now has before it Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement, including a motion for payment of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, and PAGA Penalties, and whether the Settlement should be finally approved as fair, reasonable, and adequate as to Class Members (collectively "Motion for Final Approval"), as well as a [Proposed] Final Approval Order.

Due and adequate notice having been given to Class Members, and the Court having reviewed the Settlement and duly considered Plaintiff's Motion for Final Approval, the supporting declarations and exhibits thereto, all other papers filed and proceedings had hereto, the record in this Action, and any oral argument, and good cause appearing,

THE COURT HEREBY ORDERS AND DECREES AS FOLLOWS:

1. The Court, for purposes of this Final Approval Order, refers to all terms and definitions as set forth in the Settlement.

2. Plaintiff's Motion for Final Approval came before Department 23 of this Court, the Honorable Jill H. Talley presiding, on April 26, 2024.

1 3. The Court finds that the Settlement was made and entered into in good faith, the terms
2 of which are fair, reasonable, and adequate; was reached following meaningful discovery and
3 investigation conducted by Plaintiff and his counsel of record (“Class Counsel”); is the result of
4 serious, informed, adversarial, and arms-length negotiations between the Parties; and therefore,
5 meets the requirements for final approval. In so finding, the Court has considered all the evidence
6 presented, including evidence regarding the strength of Plaintiff’s claims; the risk, expense, and
7 complexity of the claims presented; the likely duration of further litigation; the settlement amount
8 offered; the extent of investigation and discovery completed; and the experience and views of Class
9 Counsel. The Court has further considered the absence of any objections or Requests for Exclusion
10 from the Settlement. Accordingly, the Court hereby **GRANTS** Plaintiff’s Motion for Final
11 Approval and **ORDERS** Judgment to be entered in accordance with the terms herein.

12 4. The Court certifies, for settlement purposes only, the following Class (the “Settlement
13 Class Members”): All individuals (1) who worked for Orange Crush; and (2) who worked for any
14 other entity operated by Johnny Ray as an hourly, non-exempt employee and was staffed to perform
15 work for Nortech during the Class Period – September 17, 2017 through August 26, 2023. Excluded
16 from the Settlement Class are all Class Members who submit a valid and timely Request for
17 Exclusion from the Settlement.

18 5. Notwithstanding the submission of a timely Request for Exclusion, Class Members
19 are still bound by the settlement and release of the Released PAGA Claims or remedies under the
20 Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal. 4th 969, as requests to be excluded
21 from the Settlement do not apply to the Released PAGA Claims.

22 6. The deadline for Class Members to submit a Request for Exclusion or to submit
23 written objections to the Settlement was March 9, 2024.

24 7. No Requests for Exclusion were received. Accordingly, all 1,311 Class Members
25 remain in the Settlement Class.

26 8. All Class Members had an opportunity to object to the Settlement. No written
27 objections were received.

28 9. The Court Approved Notice of Class Action Settlement and Hearing Date for Final

1 Court Approval (the “Class Notice”), which was attached to the Settlement as **Exhibit A** and
2 provided to the Class pursuant to the plan for distribution described under the Settlement, conformed
3 with the requirements of rules 3.766 and 3.769 of the California Rules of Court, and constituted the
4 best notice practicable under the circumstances, by providing individual and adequate notice of the
5 proceedings and of the matters set forth therein to Class Members. The Class Notice fully satisfied
6 the requirements of due process and provided the Class Members with adequate instructions and a
7 variety of means to obtain additional information.

8 10. A full opportunity has been afforded to Class Members to participate in the Final
9 Approval Hearing, and all Class Members and other persons wishing to be heard have been heard
10 and/or had an opportunity to be heard. Class Members have had a full and fair opportunity to exclude
11 themselves from, or object to, the Settlement. Accordingly, the Court determines that all Class
12 Members who did not submit a timely Request for Exclusion (“Participating Class Members”) are
13 bound by this Final Approval Order and the concurrently filed Judgment.

14 11. Release of Claims Against Released Parties When Gross Settlement Amount Paid
15 in Full. Effective on the date when Defendants fully funds the entire Gross Settlement Amount and
16 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
17 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
18 follows: (Settlement Agreement, ¶ 5.1.)

- 19 a. Plaintiff’s Release of Plaintiff’s Further Released Claims Against
20 Defendants. Plaintiff and Plaintiff’s former and present spouses,
21 representatives, agents, attorneys, heirs, administrators, successors, and
22 assigns generally, release and discharge Released Parties including by waiver
23 of all rights, protections and benefits under California Civil Code section
24 1542, which includes all claims known and unknown related to Plaintiff’s
25 employment with Orange Crush including claims alleged in the Action, any
26 claims Plaintiff may have against Nortech, except as may be prohibited by
27 law, which may have existed at the time Plaintiff signs this Agreement.
28 Plaintiff’s Further Released Claims excludes claims for unemployment

1 insurance, disability, social security, workers' compensation (except for
2 claims pursuant to Labor Code sections 132a and 4553), and any claims or
3 causes of action arising out of any event or controversy occurring after the
4 time Plaintiff signs this Agreement including for any obligation arising out
5 of this Agreement. (Settlement Agreement, ¶ 5.2.)

6 1) Plaintiff's Waiver of Rights under California Civil Code § 1542. For
7 purposes of Plaintiff's Release, Plaintiff expressly waives and
8 relinquishes the provisions, rights, and benefits, if any, of Section 1542
9 of the California Civil Code, which reads: A general release does not
10 extend to claims that the creditor or releasing party does not know or
11 suspect to exist in his or her favor at the time of executing the release,
12 and that if known by him or her would have materially affected his or
13 her settlement with the debtor or Released Party. (Settlement
14 Agreement, ¶ 5.2.1.)

15 b. Release of Released Class Claims by Participating Class Members Who Are
16 Not Aggrieved Employees. All Participating Class Members, on behalf of
17 themselves and their respective former and present representatives, agents,
18 attorneys, heirs, administrators, successors, and assigns, are deemed to
19 release Released Parties from any and all claims, rights, demands, liabilities
20 and causes of action alleged in the Action, including: (1) Failure to Pay
21 Minimum and Regular Rate Wages (Cal. Lab. Code §§ 204, 1194, 1194.2,
22 and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§
23 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§
24 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code
25 §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab.
26 Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Cal.
27 Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage
28 Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal.

1 Bus. & Prof. Code §§ 17200, *et seq.*) and all other claims, rights, demands,
2 liabilities and causes of action that were asserted or that could have
3 reasonably been asserted based on the facts and claims alleged in the
4 Operative Complaint in the Action, and any amendments thereto. Except as
5 set forth in Paragraph 5.4 (Release of Released PAGA Claims by
6 Participating Class Members; and Non-Participating Class Members Who
7 Are Aggrieved Employees) of this Agreement, Participating Class Members
8 do not release any other claims, including claims for vested benefits,
9 wrongful termination, violation of the Fair Employment and Housing Act,
10 unemployment insurance, disability, social security, workers' compensation,
11 or claims based on facts occurring outside the Class Period. (Settlement
12 Agreement, ¶ 5.3.)

- 13 c. Release of Released PAGA Claims by Participating Class Members and Non-
14 Participating Class members who Are Aggrieved Employees. All
15 Participating Class Members; and Non-Participating Class Members who are
16 Aggrieved Employees, on behalf of themselves, the state of California, and
17 their respective former and present representatives, agents, attorneys, heirs,
18 administrators, successors, and assigns, are deemed to release the Released
19 Parties from all claims, rights, demands, liabilities and causes of action
20 arising from PAGA (Labor Code §§ 2689, *et seq.*) that were asserted or that
21 could have reasonably been asserted based on the facts and claims alleged in
22 the Operative Complaint in the Action, and any amendments thereto and
23 Plaintiff's PAGA Notice, and any amendments thereto, arising during the
24 PAGA Period. (Settlement Agreement, ¶ 5.4.)
- 25 d. Released Parties. "Released Parties" means Defendants together with their
26 present and former parents, subsidiaries, affiliated and related entities,
27 present and former owners, boards, officers, directors, trustees, shareholders,
28 members, partners, managing employees, agents, insurers, attorneys,

representatives, heirs, executors, administrators, successors, and assigns who may be held liable for any of the Released Class Claims and the Released PAGA Claims. (Settlement Agreement, ¶ 1.47.)

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

13. The Court finds that the Gross Settlement Amount ("GSA"), the Net Settlement Amount, and the methodology used to calculate Individual Class Payments and Individual PAGA Payments to Participating Class Members and Aggrieved Employees, respectively, are fair and reasonable. Thus, Court authorizes the Administrator to calculate and pay individual settlement shares in accordance with the terms of the Settlement.

14. Defendants are ordered to fully fund the GSA (\$400,000.00), and also the amounts necessary for Defendants' share of employer payroll taxes owed on the Wage Portions of the Individual Class Payments, by transmitting the funds to the Administrator no later than 21 days after the Effective Date, as that term is defined under the Settlement.

15. Within fourteen (14) calendar days after Defendants funds the GSA, the Settlement Administrator shall disburse, in the amounts approved by the Court as provided below, the following payments: (1) the Class Counsel Fees Payment; (2) the Class Counsel Litigation Expenses Payment (3) the Class Representative Service Payment; (4) Administration Expenses Payment; (5) the LWDA PAGA Payment; and (6) the 25% share of the PAGA Penalties payable to Aggrieved Employees in Individual PAGA Payments. The remainder shall be distributed to Participating Class Members in Individual Class Payments.

16. A total amount of \$40,000.00 shall be allocated as "PAGA Penalties," payable from the GSA, for resolution of the Released PAGA Claims and distributed as follows: 75% (\$30,000.00) to the California Labor and Workforce Development Agency (the "LWDA") (the "LWDA PAGA Payment") and 25% (\$10,000.00) to Aggrieved Employees (the "Individual PAGA Payments"). The LWDA and Aggrieved Employees' claims for the Released PAGA Claims are hereby extinguished.

17. The Court confirms the appointment of Plaintiff as the Class Representative, for settlement purposes only. In addition to any recovery that Plaintiff is eligible to receive as a

1 Participating Class Member and Aggrieved Employee, the Court approves and orders a service
2 payment to Plaintiff in the amount of **\$7,500.00** (the “Class Representative Service Payment”),
3 payable from the GSA, for his role and service as the Class Representative, for the risks and work
4 attendant to that role, and for his general release of claims and waiver of section 1542 rights.

5 18. The Court confirms the appointment of Moon Law Group, PC, as Class Counsel, for
6 settlement purposes only, as they are experienced in wage and hour class action litigation, have no
7 apparent conflicts of interest with Plaintiff, other Class Members, or the Administrator, and have
8 adequately represented Class interests. The Court approves and orders the payments to Class
9 Counsel, payable from the GSA, of **\$133,333.33** for reasonable attorneys’ fees (“Class Counsel Fees
10 Payment”), and of **\$18,706.54**, for reimbursement of out-of-pocket costs (“Class Counsel Litigation
11 Expenses Payment”). The Court finds that these amounts are reasonable considering the benefits
12 provided to the Class.

13 19. The Court confirms the appointment of Simpluris, Inc. as the Administrator, who has
14 fulfilled its initial notice and reporting duties. The Court approves and orders the payment to the
15 Administrator of **\$15,000.00** (“Administration Expenses Payment”), payable from the GSA, for
16 settlement administration.

17 20. Pursuant to California Code of Civil Procedure section 384, following the expiration
18 of the 180-day check-cashing deadline, should there be any uncashed checks, the Settlement
19 Administrator shall transmit those amounts to the California State Controller’s Office for Unclaimed
20 Property in the name of each Participating Class Member and/or Aggrieved Employee who failed to
21 cash their settlement check prior to the void date.

22 21. In accordance with California Rule of Court 3.771(b), notice of the concurrently
23 filed Judgment will be given to the Settlement Class by the Administrator, who will post an
24 electronic copy on its website for no less than ninety (90) calendar days following entry thereof.

25 22. This Final Approval Order and the concurrently filed Judgment are intended to be a
26 final disposition of the Action in its entirety and are intended to be immediately appealable.

27 23. The obligations set forth in the Settlement are deemed part of this Final Approval
28 Order and the concurrently filed Judgment, and the Parties and Settlement Administrator are ordered

1 to carry out the Settlement according to its terms and provisions.

2 24. Following entry of the concurrently filed Judgment, and without affecting the finality
3 thereof, pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
4 continuing jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
5 enforcing this Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
6 addressing such post-Judgment matters as are permitted by law.

7 25. The Settlement is finally approved but is not an admission by Defendants of the
8 validity of any claims in this Action, or of any wrongdoing by Defendants or of any violation of
9 law. Neither the Settlement nor any related document shall be offered or received in evidence in
10 any civil, criminal, or administrative action or proceeding other than such proceedings as may be
11 necessary to consummate or enforce the Settlement.

12 26. The Court sets a (Non-Appearance) Compliance Hearing re: Distribution on
13 2/7/25 at 10:30 a.m./p.m. in **Department 23**. Class Counsel are ordered
14 to file a final report and declaration by the Administrator regarding settlement distribution no later
15 than fifteen (15) calendar days prior to the Compliance Hearing. No appearance will be required at
16 the Compliance Hearing if the Settlement Administrator's declaration reports that all the
17 distributions under the Agreement are complete.

18 **IT IS SO ORDERED.**

19 DATE: 05/02/2024



20 *Jill Talley*
21 THE HON. JILL H. TALLEY
22 Judge of the Superior Court, Sacramento County
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