

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Kane Moon (SBN 249834), Allen Feghali (SBN 301080) FIRM NAME: Moon Law Group, P.C. STREET ADDRESS: 1055 West Seventh Street, Suite 1880 CITY: Los Angeles STATE: CA ZIP CODE: 90017 TELEPHONE NO.: (213) 232-3128 FAX NO.: (213) 232-3125 E-MAIL ADDRESS: kmoon@moonlawgroup.com, afeghali@moonlawgroup.com ATTORNEY FOR (name): Plaintiff Judith Cortes Tinoco		FOR COURT USE ONLY E-RECEIVED by Superior Court of CA, County of Santa Clara, on 11/27/2023 5:23 PM Reviewed By: R. Walker Case #21CV389519 Envelope: 13693039
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 161 North First Street MAILING ADDRESS: 161 North First Street CITY AND ZIP CODE: San Jose 95113-1090 BRANCH NAME: Old Courthouse		
PLAINTIFF/PETITIONER: Plaintiff Judith Cortes Tinoco DEFENDANT/RESPONDENT: Defendant SWA Services Group, Inc. OTHER:		CASE NUMBER: 21CV389519
		JUDICIAL OFFICER: Honorable Theodore C. Zayner
PROPOSED ORDER (COVER SHEET)		DEPT: 19

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Plaintiff Judith Cortes Tinoco
2. Title of the proposed order:
Order and Judgment Granting Plaintiff Judith Cortes Tinoco's Motion for Final Approval of Class and PAGA Action Settlement
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Hearing on Motion for Final Approval of Class and PAGA Action Settlement
 - b. Date and time: November 15, 2023, at 1:30 p.m.
 - c. Place: Department 19 of the Superior Court of the State of California for the County of Santa Clara, 161 North First Street, San Jose, California 95113-1090
4. The proposed order was served on the other parties in the case.

Jacquelyne VanEmmerik, Esq.
(TYPE OR PRINT NAME)

► Jacquelyne VanEmmerik
(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:
Tinoco v. SWA Services Group, Inc.

CASE NUMBER:
21CV389519

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

1055 West Seventh Street, Suite 1880, Los Angeles, CA 90017

b. My electronic service address is (*specify*): 1055 West Seventh Street, Suite 1880, Los Angeles, CA 90017

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

HOGE FENTON JONES & APPEL, INC. - Sarju A. Naran; Maysa Saeed - Attorneys for Defendant SWA Services Group, Inc

b. To (*electronic service address of person served*): Sarju A. Naran; Maysa Saeed

c. On (*date*): 11/27/2023

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: 11/27/2023

Janelle Jickain

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

Kane Moon (SBN 249834)
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Attorneys for Plaintiff, Judith Cortes Tinoco

FILED
November 30, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara

21CV389519
By: *rwalker*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JUDITH CORTES TINOCO, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

SWA SERVICES GROUP, INC. a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21CV389519

[Honorable Theodore C. Zayner,
Department 19]

**~~{PROPOSED}~~ ORDER AND JUDGMENT
GRANTING PLAINTIFF JUDITH
CORTES TINOCO'S MOTION FOR
FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

FINAL APPROVAL HEARING

Date: November 15, 2023
Time: 1:30 PM
Dept: 19

Complaint Filed: October 28, 2021
Trial Date: Not Set

1 The Court issued an Order Granting Plaintiff Judith Cortes Tinoco’s Motion for Preliminary
2 Approval of Class and PAGA Action Settlement on March 29, 2023. Plaintiff Judith Cortes Tinoco
3 (“Plaintiff”) now seeks a Final Order and Judgment Granting Final Approval of the same Joint
4 Stipulation of Class and PAGA Action Settlement ("Settlement") between Plaintiff and Defendant
5 SWA Services Group, Inc. ("Defendant"), attached to the Declaration of Kane Moon in Support of
6 Plaintiff Judith Cortes Tinoco’s Motion for Final Approval of Class and PAGA Action Settlement as
7 **Exhibit 1.**

8 The Court, having considered Plaintiff Judith Cortes Tinoco’s Notice of Motion and Motion
9 for Final Approval of Class and PAGA Action Settlement (“Motion”), the supporting Declarations
10 and Exhibits therein, the records and files in this Action, and the absence of any written objections
11 received regarding the Settlement; and good cause appearing, **HEREBY ORDERS, ADJUDGES,**
12 **AND DECREES AS FOLLOWS:**

13 The Court has jurisdiction over all claims asserted in this Action, Plaintiff, all Participating
14 Class Members, all Aggrieved Employees, and Defendant.

15 The Court, for purposes of this Final Order and Judgment, refers to all defined terms as set
16 forth in the Settlement.

17 The Settlement appears to have been made and entered into in good faith and is hereby
18 approved, subject to any limitations on the requested fees and payments as set forth below.

19 For purposes of effectuating the Settlement, the following Class is hereby certified: all current
20 and former hourly-paid or non-exempt employees who have worked for Defendant in the State of
21 California at any time from October 28, 2017 through July 14, 2022. *Settlement*, ¶¶ 6, 8.

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

24 No Class Members have objected to the terms of the Settlement, and no Class Members have
25 requested exclusion from the Settlement. *Declaration of Nathalie Hernandez*, ¶¶ 12, 13. There are
26 therefore a total of 367 Participating Class Members, representing 100% of the 367 Class Members.
27 *Id.* at ¶ 14.
28

1 Plaintiff, all Participating Class Members, and all Aggrieved Employees shall have, by
2 operation of this Final Order and Judgment, fully, finally and forever released, relinquished, and
3 discharged all Released Parties from all Settled Claims and Settled PAGA Claims as of the (1)
4 Effective Date and (2) payment of all funds due under the terms of the Settlement, as stated in the
5 Settlement and reproduced here:

- 6 1. Released Parties. “Released Parties” means Defendant and each of its owners,
7 members, partners, shareholders, agents (including, without limitation, investment
8 bankers, accountants, insurers, reinsurers, attorneys, and any past, present, or future
9 officers, directors, and employees), servants, assigns, subsidiaries, affiliates,
10 independent contractors, volunteers, predecessors, successors, parent companies, and
11 organizations, and any and all entities in which Defendant has an interest. *Settlement*,
12 ¶ 30.
- 13 2. Settled Claims. “Settled Claims” means all claims, charges, complaints, liens,
14 demands, causes of action, obligations, damages and liabilities, arising during the
15 Class Period that each Class Member had, now has, or may hereafter claim to have
16 against the Released Parties and that were asserted in the Complaint, or that could
17 have been asserted in the Complaint based on any of the facts alleged in the
18 Complaint, regardless of whether such claims arise under federal, state and/or local
19 law, statute, ordinance, regulation, common law, or other source of law. The Settled
20 Claims specifically include, but are not limited to, the following claims, but only to
21 the extent these claims reasonably arise out of the facts alleged in the Complaint: (1)
22 Violation of California Labor Code §§ 1194, 1194.2, 1197, and 1197.1 (failure to pay
23 minimum and straight time wages); (2) Violation of California Labor Code §§ 510
24 and 1198 (failure to pay overtime wages); (3) Violation of California Labor Code §§
25 226.7 and 512(a) (failure to provide compliant meal periods and associated
26 premiums); (4) Violation of California Labor Code § 226.7 (failure to provide
27 compliant rest periods and associated premiums); (5) Violation of California Labor
28 Code §§ 2800 and 2802 (failure to indemnify business expenses); (6) Violation of

California Labor Code §§ 201, 202 and 203 (failure to timely pay final wages); (7) Violation of California Labor Code § 204 (failure to timely pay wages during employment); (8) Violation of California Labor Code § 226(a) (failure to provide compliant wage statements); (9) Violation of California Labor Code § 1174(d) (failure to keep requisite payroll records); (10) Violation of California Business and Professions Code §§ 17200, et seq.; and (11) incorporated or related claims asserted through the Private Attorneys General Act (“PAGA”) for any of the above alleged California Labor Code violations. *Settlement*, ¶ 38.

3. Settled PAGA Claims. “Settled PAGA Claims” means any claim for civil penalties under PAGA that could reasonably arise from any of the California Labor Code violations and/or violations of Wage Orders alleged within the Complaint or in the Notice to the LWDA, including, but not limited to, California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. *Settlement*, ¶ 39.

4. Release of Settled Claims. As of the Effective Date and after payment of all funds due under the terms of this Settlement, Plaintiff and all Settlement Class Members hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all Settled Claims against any and all Released Parties. The Settlement includes a release of all Settled Claims during the Class Period by Settlement Class Members. The Parties agree that it is their intent that the terms set forth in this Agreement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every Settlement Class Member to obtain any recovery based on Settled Claims. *Settlement*, ¶ 48.

5. Release of Settled PAGA Claims. As of the Effective Date and after payment of all funds due under the terms of this Settlement, the Named Plaintiff, individually, and on behalf of the State of California and all PAGA Members, hereby does and shall be deemed to have fully, finally, and forever released, settled, compromised,

relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims during the PAGA Period. The Parties agree that it is their intent that the terms set forth in this Agreement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every PAGA Member to obtain any recovery based on the Settled PAGA Claims. All PAGA Members shall release claims arising under PAGA regardless of their decision to participate in the Settlement. *Settlement*, ¶ 49.

6. Effective Date. “Effective Date” means the first business day following the last of the following occurrences: (i) the day final approval is granted if there are no objections to the settlement, (ii) sixty (60) days following the date the Court enters a Final Approval Order and Final Judgment, if there are objections by any Class Member and no appeal is filed; or (iii) if an appeal is filed, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*) resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible. *Settlement*, ¶ 13.

The Maximum Settlement Amount, Net Distribution Fund, and methodology used to calculate and pay the Settlement Payments and PAGA Payments are fair and reasonable. The Settlement Administrator is authorized to pay the Settlement Payments and PAGA Payments to the Participating Class Members and Aggrieved Employees in accordance with the terms of the Settlement.

Defendant shall pay a total of \$335,000.00 to resolve this litigation. *Settlement*, ¶ 18. Defendant will fund the Maximum Settlement Amount within fourteen (14) days of the Effective Date. *Settlement*, ¶ 59. The Settlement Administrator will distribute the Maximum Settlement Amount installments within fourteen (14) days of receipt. *Settlement*, ¶ 40.

From the Maximum Settlement Amount, a payment of \$22,500.00 shall be paid to the California Labor and Workforce Development Agency (“LWDA”), representing 75% of the PAGA Allocation awarded under the terms of the Settlement, pursuant to the California Private Attorneys General Act of 2004, *California Labor Code* sections 2698, *et. seq.* *Settlement*, ¶ 51(f).

1 From the Maximum Settlement Amount, a Class Representative Service Payment in the
2 amount of \$7,500.00 shall be paid to Judith Cortes Tinoco for her service in furtherance of the Action
3 and in consideration of her General Release and waiver of *California Civil Code* section 1542 rights.
4 Judith Cortes Tinoco is hereby confirmed as Class Representative. *Settlement*, ¶ 51(d).

5 From the Maximum Settlement Amount, Attorneys' Fees in the amount of \$111,666.67 and
6 Attorneys' Costs in the amount of \$11,674.59 shall be paid to Class Counsel for their reasonable fees
7 and actual costs incurred in furtherance of this Action. *Settlement*, ¶¶ 51(a)-(b). The fees and costs
8 shall be distributed to Class Counsel as set forth in the Settlement. The Court finds that the fees are
9 reasonable in light of the benefit provided to the Class. Moon Law Group, P.C. is hereby confirmed
10 as Class Counsel.

11 From the Maximum Settlement Amount, Settlement Administration Costs in the amount of
12 \$9,840.00 shall be paid to the designated Settlement Administrator, ILYM Group, Inc. *Settlement*, ¶
13 51(c).

14 The Class Notice conforms with the requirements of *California Rules of Court* rules 3.766
15 and 3.769 and constitutes the best notice practicable under the circumstances, providing individual
16 notice to all Class Members who could be identified through reasonable effort and due and adequate
17 notice of the proceedings and matters set forth therein. The Class Notice also satisfied the
18 requirements of Due Process.

19 The Parties are ordered to have notice of this Final Order and Judgment sent to all
20 Participating Class Members and Aggrieved Employees in accordance with *California Rules of*
21 *Court* section 3.771(b), along with the Settlement Payments and PAGA Payments issued via First
22 Class U.S. Mail to their last known addresses and to the LWDA, pursuant to *California Labor Code*
23 section 2699(1)(3). *Settlement*, ¶ 55(c).

24 This Court shall retain jurisdiction with respect to all matters related to the administration and
25 consummation of the Settlement and any and all claims asserted in, arising out of, or related to the
26 subject matter of the lawsuit, including, but not limited to, all matters related to the Settlement and
27 the determination of all controversies relating thereto.
28

1 This Judgment is intended to be a final disposition of the Action in its entirety and is intended
2 to be immediately appealable.

3 Plaintiff Judith Cortes Tinoco's Motion for Final Approval of Class and PAGA Action
4 Settlement is hereby granted, and the Court directs that Judgment shall be entered in accordance with
5 the terms of this Order.

6 The Court schedules a Compliance Hearing for July 17, 2024 at 2:30 p.m. in Department 19
7 of the Superior Court of the State of California for the County of Santa Clara. Counsel may appear at
8 the Compliance Hearing remotely.

9 Class Counsel and the Settlement Administrator are ordered to submit a summary accounting
10 of the Net Distribution Fund at least ten court days ahead of the Compliance Hearing, which
11 identifies distributions made as ordered herein, the number and value of any uncashed checks,
12 amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate
13 to bring to the Court's attention.

14 **IT IS SO ORDERED.**

15 DATE: November 30, 2023



16 Honorable Theodore C. Zayner
17 Judge of the Superior Court of California for the
18 County of Santa Clara
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