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individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

BARBARA LEAR, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

RAXIUM, INC., a Delaware Corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 21CV004358

ASSIGNED FOR ALL PURPOSES TO:
JUDGE EVELIO GRILLO
DEPARTMENT 21

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. 420139153988

Date: August 17, 2022
Time: 10:00 a.m.

Filed: December 20, 2021
FAC Filed: March 15, 2022
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on August 17, 2022 at 10:00 a.m., in Department 21 before the
4 Honorable Honorable Evelio Grillo, presiding. Plaintiff Barbara Lear (“Plaintiff”) filed this lawsuit on
5 December 20, 2021. The operative Complaint consists of a single cause of action under the Private
6 Attorneys General Act (“PAGA”) alleging that Raxium, Inc. (“Defendant”) violated California law by
7 failing to pay overtime, failing to pay minimum wages, failing to provide meal periods or pay premiums
8 in lieu thereof, failing to provide rest periods or pay premiums in lieu thereof, failing to provide accurate
9 wage statements, failing to timely pay all final wages owed, failing to maintain accurate records, failing
10 to provide all required sick pay, and violating California Labor Code sections 558 & 558.1. The
11 Complaint further alleges that Defendant is liable for civil penalties under the PAGA as a result of the
12 alleged violations. Defendant has denied all of Plaintiff’s allegations. Plaintiff sought attorneys’ fees
13 and costs as part of this Action.

14 The parties have agreed to a settlement of the PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims and dismissal consistent with the terms of the PAGA
16 Settlement (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the
17 Agreement. The Court, having received and considered Plaintiff’s Motion, the declarations in support,
18 the Agreement, the Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
19 DETERMINATIONS AS FOLLOWS:

20 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
21 **EMPLOYEES**

22 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
23 PAGA claims asserted in this litigation and is authorized to act as a private attorney general with respect
24 to the PAGA claims being released under the Agreement. The Court finds the scope of individuals
25 subject to the terms and conditions of the Agreement, its releases, and all rights and obligations
26 thereunder include the following:

27 All non-exempt employees who have or continue to work for Defendant in
28 California from November 24, 2020, up to and including May 3, 2022.

1 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
2 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
3 the Agreement.

4 **II. APPROVING THE AGREEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
6 A. The Court finds that the Agreement is fair, reasonable, and adequate and, therefore, approved as
7 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties
8 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to
9 each individual as required by statute for damages purposes, the risk of being able to maintain the suit in
10 Court in light of *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022), and the Court's
11 statutorily authorized power to reduce penalties, the Agreement represents a substantial recovery for
12 Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") to further the
13 LWDA's purpose in enforcing the Labor Code. The Court also finds that the Agreement provides a
14 recovery that creates an effective, substantial deterrent to any potential future non-compliance,
15 furthering the purpose of the Labor Code and LWDA.

16 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
17 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
18 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

19 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
20 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
21 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
22 reference in its entirety, as if stated here in full, including the \$135,000 Gross Settlement Amount.

23 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
24 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the
25 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
26 Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
27 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
28 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.

1 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
2 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five percent (35%) of the Gross
3 Settlement Amount, *i.e.* \$47,250, to be appropriate compensation for Plaintiff's Counsel. The attorneys'
4 fees request is within the range that has been approved by other Courts in similar cases and is reasonable
5 in light of the circumstances of this case, the substantial and beneficial results obtained on behalf of
6 Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the course of this
7 case, which included potential loss at summary judgment and/or trial proceedings. A lodestar cross
8 check on the fee award also supports this award. Additionally, the Court orders that \$9,625.26 of the
9 Gross Settlement Amount will be paid to Plaintiff's Counsel for reasonable costs incurred in this case.

10 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
11 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
12 \$3,000. Any difference between the actual cost of the Claims Administrator and the approved payment
13 will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved
14 Employees.

15 The Court orders that Plaintiff will receive \$7,500 from the Gross Settlement Amount as a
16 Service Award for her work on behalf of the Aggrieved Employees and the LWDA and in exchange for
17 her general release of all her individual claims in addition to any amount Plaintiff may be entitled to
18 under the Agreement's pro rata distribution formula.

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

23 The releases and waivers for Aggrieved Employees are also approved by the Court as set forth in
24 the Agreement.

25 **III. APPROVAL OF THE NOTICE OF SETTLEMENT**

26 The Court finds that the proposed Notice of Settlement, which is attached to this Order as
27 Exhibit A, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The
28 Court further finds that the Notice of Settlement and distribution of such notice by first class mail to

each identified Aggrieved Employees at his or her most recent address based on a National Change of Address database search from the Aggrieved Employees' last known address and a skip trace on any Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Aggrieved Employees the opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last name, last known mailing address, social security number, and hire and termination dates for pay period calculations to the Claims Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Claims Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

IV. IMPLEMENTATION SCHEDULE

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

Last day for Defendant to provide Claims Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date
Last day for Claims Administrator to calculate and report to the Parties the Net Settlement Amount, LWDA Payment, and Claim Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Claims Administrator calculates and reports to the Parties the Net Settlement Amount, LWDA Payment, and Claim Amounts for Aggrieved Employees

Last day for Claims Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant funds the settlement
Last day for Claims Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, LWDA Payment, Claims Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant fund the settlement
Last day for Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Aggrieved Employees
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
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this action be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: _____

By: _____

Hon. Evelio Grillo

Exhibit A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Case No. 21CV004358

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

BARBARA LEAR, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

RAXIUM, INC., a Delaware Corporation; and DOES
1 to 100, inclusive,

Defendant.

TO: All non-exempt employees who have or continue to work for Defendant in California from November 24, 2020 up to and including May 3, 2022 (the “Aggrieved Employees”)

This Notice is being provided to you to inform you of a Private Attorney General Act (“PAGA”) Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Lear v. Raxium, Inc.*, Alameda County Superior Court of California, Case No. 21CV004358, filed December 20, 2021 (the “Action”). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Barbara Lear (“Plaintiff”) alleged that Raxium, Inc. (“Defendant”) violated California law by (1) Failing to Pay Overtime Wages, (2) Failing to Pay Minimum Wages, (3) Failing to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failing to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failing to Provide Accurate Wage Statements, (6) Failing to Pay Final Wages, (7) Failing to Maintain Accurate Records, (8) Failing to Provide Paid Sick Leave, and (9) allegation to support individual liability under Labor Code section 558 and 558.1 (collective, the “Claims”). Defendant has denied all of Plaintiff's allegations.

In the Action, Plaintiff sought to obtain (i) civil penalties, fees, and costs on behalf of the LWDA and the Aggrieved Employees, including herself and you, pursuant to the PAGA for the Claims Plaintiff brought or could have brought in her complaint, and (ii) damages, restitution, statutory penalties, fees, and costs for Plaintiff in her individual capacity for the Claims.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendant has denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency (“LWDA”) to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1. The scope of the PAGA Settlement includes all of PAGA-related claims and remedies thereof for the State of California and Aggrieved Employees, including Plaintiff, for the time period identified above. Aggrieved Employees cannot opt out of this PAGA-specific waiver of claims. However, the waiver does not extend to any non-PAGA claims you may have.

“Released Parties” means Rick Dodd, Craig Peters, and Defendant, as well as Defendant's current and former insurers, officers, directors, employees, agents, investors, attorneys, shareholders, administrators, affiliates, benefit plans, plan administrators, professional employer organization or co-employer, insurers, trustees, divisions, parents, subsidiaries, acquirors, predecessor and successor corporations, and assigns.

By operation of the PAGA Settlement's terms, all Aggrieved Employees will release the Released Parties from any and all claims for civil penalties pursuant to PAGA that were asserted in Plaintiff's LWDA Letter and/or Complaint, any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein, and any claims for fees and costs based thereon, including, but not limited to, claims for civil penalties for any and all of the following violations of California Labor Code: (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage Statements, (6) Failure to Pay Final Wages, (7) Failure to Maintain Accurate Records, and (8) Failure to Provide Paid Sick Leave.

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement will be barred from proceeding with any PAGA claim released by this Settlement.

The settlement's scope also includes all individual claims, known or unknown, and remedies thereof Plaintiff had and could have had in her individual capacity against Defendant on or before the date Plaintiff executed the settlement. This portion of the settlement does not cover you.

Under the terms of the Settlement, Defendant has agreed to pay a Gross Settlement Amount of \$135,000 to resolve the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], the fees and expenses of the Claims Administrator in the amount of \$[REDACTED], and a Service Award for Plaintiff in the amount of \$[REDACTED], which will result in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between November 24, 2020 to May 3, 2022 and dividing that number by the number of pay periods worked by all Aggrieved Employees between November 24, 2020 to May 3, 2022, and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendant.

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