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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

VERNON BARNETT, individually and	)	Case No.: 37-2022-00019924-CU-OE-
as an aggrieved employee pursuant to the	)	CTL
Private Attorneys General Act (“PAGA”)	)	
on behalf of the State of California and	)	Judge: Hon. Katherine Bacal
other aggrieved	)	Dept. C-69
employees,	)	
	)	[PROPOSED] ORDER
Plaintiffs,	)	
	)	
vs.	)	
	)	
	)	
QW INSURANCE SOLUTIONS, LLC,	)	
a Washington limited liability company;	)	
LENDINGTREE INC., a Delaware	)	
corporation; LENDINGTREE LLC, a	)	
Delaware limited liability company; and	)	
DOES 3 through 50,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
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	)	
	)	
	)	

1 **ORDER GRANTING PRELIMINARY APPROVAL OF**
2 **CLASS ACTION SETTLEMENT AND THE PAGA SETTLEMENT**

3 This matter came on for hearing on March 22, 2024, at 1:30 p.m. in
4 Department C-69 of the above-captioned court on the Motion for Preliminary
5 Approval of Class Action Settlement and of the PAGA Settlement, upon the terms
6 and conditions set forth in the Class Action and PAGA Settlement Agreement and
7 Class Notice (“Settlement Agreement” or “Settlement”), a copy of which is attached
8 as Exhibit 1 to the Declaration of Thomas Rutledge filed concurrently with the
9 Motion for Preliminary Approval of Class Action and the PAGA Settlement (the
10 “Motion”) and incorporated herein by reference as though part of this Order.

11 The Court, having fully reviewed the Motion; the Memorandum of Points and
12 Authorities and Declarations filed in support thereof; the Settlement Agreement; the
13 Notice of Wage and Hour Class Action and PAGA Settlement and Hearing Date for
14 Final Court Approval (the “Wage and Hour Notice”); the Notice of FCRA Class
15 Action Settlement and Hearing Date for Final Court Approval (the “FCRA Notice”);
16 and in recognition of the Court's duty to make a preliminary determination as to the
17 reasonableness of any proposed class action settlement and PAGA settlement, and to
18 ensure proper notice is provided to Class Members and Aggrieved Employees in
19 accordance with due process requirements, and to set a Final Approval hearing
20 regarding the proposed settlement, and having heard the argument of Counsel for the
21 respective parties, **THE COURT MAKES THE FOLLOWING**

22 **DETERMINATIONS AND ORDER:**

23 It appears to the Court on a preliminary basis that the settlement amount is fair
24 and reasonable to the FCRA Class and Wage and Hour Class when balanced against
25 the probable outcome of further litigation relating to class certification, liability and
26 damages issues and potential appeals; it further appears that significant investigation,
27 research, and litigation has been conducted such that counsel for the Parties at this
28 time are able to reasonably evaluate their respective positions; it further appears that

1 settlement at this time will avoid substantial costs, delay and risks that would be
2 presented by the further prosecution of the litigation; it further appears that the
3 proposed Settlement has been reached as the result of intensive, serious and non-
4 collusive negotiations between the Parties. Additionally, it appears the PAGA
5 settlement amount is fair and reasonable.

6 Accordingly, good cause appearing, the Motion for Preliminary Approval of
7 the Class Action and the PAGA Settlement is hereby GRANTED, and as a part of
8 said preliminary approval thereof, the Court hereby orders that the Wage and Hour
9 Class and FCRA Class be conditionally certified for settlement purposes only, that the
10 PAGA settlement be preliminarily approved, and that the Law Office of Thomas D.
11 Rutledge is conditionally and preliminarily appointed Class Counsel and Counsel for
12 the Aggrieved Employees.

13 **THE COURT FURTHER FINDS AND ORDERS AS FOLLOWS:**

14 1. The Court finds that the Settlement Agreement, incorporated by this
15 reference and made a part of this order granting preliminary approval, is within the
16 range of reasonableness of a settlement that could ultimately be given final approval
17 by this court.

18 2. The Court notes that Defendants vigorously deny and continue to deny
19 generally each and all the claims and contentions alleged in this Action.

20 3. The Court preliminarily finds that the terms of the class-action settlement
21 are fair, just, reasonable, and adequate, pursuant to § 382 of the California Code of
22 Civil Procedure.

23 4. The Court finds that the elements of numerosity, commonality,
24 typicality, and adequacy have been established to support conditional certification of
25 the FCRA Class for settlement purposes only, with Plaintiff Vernon Barnett acting as
26 the Class Representative, and that the settlement has no obvious deficiencies and does
27 not improperly grant preferential treatment to the Class Representative or segments of
28 the FCRA Class.

1 5. The Court finds that the elements of numerosity, commonality,
2 typicality, and adequacy have been established to support conditional certification of
3 the Wage and Hour Class for settlement purposes only, with Plaintiff Vernon Barnett
4 acting as the Class Representative, and that the settlement has no obvious deficiencies
5 and does not improperly grant preferential treatment to the Class Representative or
6 segments of the Wage and Hour Class.

7 6. The Court further finds that significant investigation, research, litigation,
8 and formal and informal discovery have been conducted such that the Counsel for the
9 Plaintiff Vernon Barnett, individually and on behalf of all others similarly situated
10 (“Plaintiffs”) and Defendants, QW Insurance Solutions, LLC, LendingTree, Inc. and
11 LendingTree, LLC (collectively, “Defendants”) (Plaintiffs and Defendants,
12 collectively, the “Parties”) are able to reasonably evaluate their respective positions,
13 and that the settlement appears to be the product of serious, informed, and non-
14 collusive negotiations.

15 7. The Court hereby appoints, for settlement purposes, Plaintiff Vernon
16 Barnett as the Class Representative.

17 8. The court further finds that the Law Office of Thomas D. Rutledge has
18 established adequacy to be appointed as Class Counsel and Counsel for the Aggrieved
19 Employees.

20 9. The FCRA Class provisionally certified by this Order for settlement
21 purposes only means all persons who are or were applicants and/or employees of QW
22 Insurance Solutions, LLC and/or LendingTree, LLC, anywhere in the United States
23 who completed background check disclosures at any time from May 25, 2020, to the
24 date of the Court’s entry of this Order.

25 10. The Wage and Hour Class provisionally certified by this Order for
26 settlement purposes only means all persons who are employed or were previously
27 employed by QW Insurance Solutions, LLC, LendingTree, LLC, or both, and who
28 worked in California as a non-exempt employee at any time from May 25, 2018, to

1 the date of the Court's entry of this Order.

2 11. The Aggrieved Employees are defined as all persons who are employed
3 or were previously employed by QW Insurance Solutions, LLC, LendingTree, LLC,
4 or both, and who worked in California as a non-exempt employee at any time from
5 May 25, 2021, to the date of the Court's entry of this Order.

6 12. The Court approves and appoints Phoenix Settlement Administrators to
7 serve as the Settlement Administrator ("Administrator").

8 13. The Court approves the proposed Wage and Hour Notice (attached as
9 Exhibits A to Exhibit 1 of the Declaration of Thomas D. Rutledge filed in support of
10 the Motion), and orders an appropriately modified version of this Notice to be mailed
11 to Wage and Hour Class Members and Aggrieved Employees in accordance with the
12 terms of the Settlement.

13 14. The Court approves the proposed FCRA Notice (attached as Exhibit B to
14 Exhibit 1 of the Declaration of Thomas D. Rutledge filed in support of the Motion),
15 and orders an appropriately modified version of this Notice to be mailed to FCRA
16 Class Members in accordance with the terms of the Settlement.

17 15. The Court finds that the Wage and Hour Notice and FCRA Notice
18 constitutes the best notice practicable under the circumstances and is in full
19 compliance with the laws of the state of California and, to the extent applicable, the
20 United States Constitution and the requirements of due process.

21 16. The Court further finds that the Wage and Hour Notice fully and
22 accurately informs Wage and Hour Class Members of all material elements of the
23 proposed Settlement, of each Wage and Hour Class Member's right to be excluded
24 from the class, and each Wage and Hour Class Member's right and opportunity to
25 object to the proposed Settlement.

26 17. The Court further finds that the Wage and Hour Notice fully and
27 accurately informs Aggrieved Employees of all material elements of the proposed
28 Settlement.

1 18. The Court further finds that the FCRA Notice fully and accurately
2 informs FCRA Class Members of all material elements of the proposed Settlement, of
3 each FCRA Class Member's right to be excluded from the class, and each FCRA
4 Class Member's right and opportunity to object to the proposed Settlement.

5 19. The Wage and Hour Notice and FCRA Notice adequately advises the
6 respective class about:

- 7 A. The respective class action;
- 8 B. The settlement terms and the benefits available to each respective
9 Class Member;
- 10 C. Each respective Class Member's right to object and/or "opt out,"
11 and the timing and procedures for doing so;
- 12 D. The conditional certification of the respective Class for settlement
13 purposes only;
- 14 E. Preliminary court approval of the proposed settlement;
- 15 F. Timing and procedures for distributing the settlement funds; and
- 16 G. The date of the Final Approval Hearing, as well as the rights of
17 members to submit objections and appear in connection with said
18 hearing.

19 20. Accordingly, the Court hereby approves the proposed Wage and Hour
20 Notice and FCRA Notice and finds that mailing to the last known address of members
21 of the respective class and Aggrieved Employees, as specifically described within the
22 Settlement Agreement, constitutes an effective method of notifying Wage and Hour
23 Class Members, FCRA Class Members, and Aggrieved Employees of their rights
24 with respect to the Settlement.

25 21. The Court further finds that the terms of the settlement as they
26 relate to the claims arising under the PAGA are fair and reasonable.

27 22. The Court preliminarily approves the PAGA settlement and orders that
28 notice to the Aggrieved Employees be issued as part of the Wage and Hour Notice.

1 23. The Court orders that, within 30 days after entry by the Court of this
2 Order, Defendants shall provide to the Administrator a list of all persons who
3 comprise the Wage and Hour Class, the FCRA Class, and the Aggrieved Employees,
4 as well as the number of workweeks worked by the Wage and Hour Class during the
5 Wage and Hour Class Period and the relevant payroll periods for the Aggrieved
6 Employees during the PAGA Period. These lists shall also include the name, last
7 known address, and social security number of each Class Member and/or Aggrieved
8 Employee, shall not be provided to Class Counsel, and shall be used only by the
9 Administrator. To protect privacy rights, the Administrator must maintain the Class
10 and Aggrieved Employee Data in confidence, use it only for purposes of this
11 Settlement and for no other purpose, and restrict access to the Class and Aggrieved
12 Employee Data to Administrator employees who need access to the data to perform
13 their duties and responsibilities under this Agreement.

14 24. The Court orders that any Wage and Hour Class Member or FCRA Class
15 Member who wishes to request exclusion from the Settlement including excluding
16 themselves from any monetary relief and associated releases must send the
17 Administrator, by fax, email, or mail, a written Request for Exclusion by the
18 Response Deadline. A Request for Exclusion is any written correspondence from a
19 Class Member or his/her representative that reasonably communicates the Class
20 Member's election to be excluded from the Settlement of Wage and Hour Class
21 Action Claims and/or FCRA Class Claims and includes the Class Member's name,
22 address, and email address or telephone number. To be valid, a Request for Exclusion
23 must be timely faxed, emailed, or postmarked by the Response Deadline. Aggrieved
24 Employees may not exclude themselves from the Settlement of the Released PAGA
25 Claims.

26 25. Every Wage and Hour Class Member and FCRA Class Member who does
27 not submit a timely and valid Request for Exclusion is deemed to be a Participating
28 Class Member under the Agreement, entitled to all benefits and bound by all terms

1 and conditions of the Settlement, including the Participating Class Members’
2 Releases under Paragraph 6 of the Agreement, regardless of whether the Participating
3 Class Member actually receives the Wage and Hour Class/PAGA Notice or FCRA
4 Class Notice or objects to the Settlement.

5 26. Non-Participating Class Members who are Aggrieved Employees are
6 deemed to release the claims identified in Paragraph 6.3 of the Agreement and are
7 eligible for an Individual PAGA Payment.

8 27. The Court orders that only Participating Class Members may object to
9 the class-action components of the Settlement and/or this Agreement, including
10 contesting the fairness of the Settlement, and/or amounts requested for the Class
11 Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
12 Representative Enhancement Payment.

13 28. The Court orders that participating Class Members may send written
14 objections to the Administrator, by fax, email, or mail as described in the respective
15 Class Action Notice. In the alternative, Participating Class Members may appear in
16 Court (or hire an attorney to appear in Court) to present verbal objections at the Final
17 Approval Hearing. A Participating Class Member who elects to send a written
18 objection to the Administrator must do so by the Response Deadline.

19 29. The Court orders that non-Participating Class Members have no right to
20 object to any of the class-action components of the Settlement.

21 30. The Court finds that Class Counsel timely complied with California
22 Labor Code Section 2699(1)(2) by submitting the Motion for Preliminary Approval of
23 the Settlement to the LWDA concurrently with Plaintiffs’ submission to the Court.

24 31. The Court orders that Class Counsel will timely comply with California
25 Labor Code Section 2699(1)(3) by providing the LWDA with the Court’s Judgment or
26 order granting Final Approval of the Settlement.

27 32. The Court will hold a Final Approval Hearing at _____.m. on
28 _____, 2024, in Department C-69 of the Superior Court of

1 California, County of San Diego located at 330 West Broadway, San Diego,
2 California 92101, to determine whether the Court should grant final approval of the
3 Settlement as fair, reasonable, and adequate, at which time the Court will hear all
4 evidence and argument necessary to evaluate the Settlement, and will consider
5 Plaintiff's request for the Class Representative Enhancement Payment, and Class
6 Counsel's request for attorneys' fees, costs and the fee to the Administrator.

7 33. Each Party retains the right to respond to any objection raised by a
8 Participating Class Member, including the right to file responsive documents in Court
9 no later than five court days before the Final Approval Hearing, or as otherwise
10 ordered or accepted by the Court.

11 34. The Court expressly reserves the right to adjourn or continue the Final
12 Approval Hearing from time to time without further notice to the Class.

13 35. Any Wage and Hour Class Member or FCRA Class Member may be
14 heard at the Final Approval Hearing in support of, or in opposition to, the Court's
15 determination of the good faith, fairness, reasonableness and adequacy of the
16 proposed Settlement, the requested attorney's fees and costs, the requested class
17 representative enhancement payment, the payment to the Administrator, and any
18 order granting final approval.

19 36. The Court orders that, if the number of valid Requests for Exclusion
20 exceeds ten percent (10%) of the total of all Class Members in either the Wage and
21 Hour Class or FCRA Class, Defendants may, but are not obligated to, elect to
22 withdraw from the Settlement. If Defendants withdraw, the Settlement shall be *void*
23 *ab initio*, have no force or effect whatsoever, neither Party will have any further
24 obligation to perform under this Agreement and the Second and Third Amended
25 Complaint shall be stricken from the Court's pleadings and be of no further force or
26 effect; provided, however, Defendants will remain responsible for paying all
27 Settlement Administration Expenses incurred to that point. Defendants must notify
28 Class Counsel and the Court of its election to withdraw not later than 7 days after the

1 Administrator sends the final Exclusion List to Defense Counsel; late elections will
2 have no effect.

3 37. The Settlement represents a compromise and settlement of highly
4 disputed claims. The Parties agree that the Settlement of this matter does not
5 constitute an admission by Defendants of any violation of federal, state, or local law,
6 ordinance or regulation or of any violation of Defendants' policies, procedures, or of
7 any liability or wrongdoing whatsoever. Moreover, nothing in this Agreement or this
8 Order is intended or should be construed as an admission by Defendants that any of
9 the allegations in the Action have merit or that Defendants have any liability for any
10 claims asserted; nor should it be intended or construed as an admission by Plaintiffs
11 that Defendants' defenses in the Action have merit.

12 38. If the Court does not grant Final Approval or conditions Final Approval
13 on any material change to the Settlement (including, but not limited to, the scope of
14 release to be granted by Class Members and/or Aggrieved Employees), the Parties are
15 returned to the place where they were before this Order and are encouraged to
16 expeditiously work together in good faith to address the Court's concerns by revising
17 the Agreement as necessary to obtain Final Approval. The Court's decision to award
18 less than the amounts requested for the Class Representative Enhancement Payment,
19 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or
20 Administration Expenses Payment shall not constitute a material modification to the
21 Agreement.

22 39. Pending further order of this Court, all proceedings in this matter except
23 those contemplated herein and in the Settlement Agreement are stayed.

24 40. To facilitate administration of the settlement pending final approval,
25 Wage and Hour Class Members, FCRA Class Members, and Aggrieved Employees
26 are enjoined from initiating or prosecuting any proceedings (including filing any
27 claims with the California Division of Labor Standards Enforcement) on any claims
28 to be released pursuant to the Settlement, unless and until the Wage and Hour Class

1 Member, FCRA Class Member, or both has submitted a valid and timely request to be
2 excluded from the settlement.

3 41. Aggrieved Employees may not exclude themselves from the PAGA
4 settlement.

5 42. In the event the Settlement does not become final for any reason, this
6 preliminary order shall be of no further force or effect and the fact that the Parties
7 were willing to stipulate to class certification as part of the settlement shall have no
8 bearing on, and not be admissible in connection with, the issue of whether a class
9 should be certified in a non-settlement context.

10 **IT IS SO ORDERED.**

11
12 Dated: _____

13 Hon. Katherine Bacal
14 Judge of the Superior Court of California
County of San Diego