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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN MATEO

14 CHAMARIE SPEARS, an individual, and
15 KATHLEEN LEONARD, an individual on
16 behalf of herself and on behalf of all persons
similarly situated,

17 Plaintiff,

18 vs.

19 VITALANT, a Corporation; and DOES 1
20 through 50, inclusive,

21 Defendants.

CASE NO.: 22-CIV-03291

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: March 21, 2024_

Hearing Time: 9:00 a.m.

Judge: Susan L. Greenberg

Dept: 3

Date Filed: August 22, 2022

Trial Date: Not yet set

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23 This matter came before the Honorable Susan L. Greenberg of the Superior Court of the
24 State of California, in and for the County San Mateo, on March 21, 2024, for hearing on the
25 unopposed motion by Plaintiffs ChaMarie Spears and Kathleen Leonard (collectively, "Plaintiffs")
26 for preliminary approval of the Settlement with Defendant Vitalant ("Defendant"). The Court,
27 having considered the briefs, argument of counsel and all matters presented to the Court and good
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PRELIMINARY APPROVAL ORDER

1 cause appearing, hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action
2 Settlement.

3 **IT IS HEREBY ORDERED:**

4 1. The Court preliminarily approves the Class Action and PAGA Settlement
5 Agreement ("Agreement") attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
6 Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. This is based
7 on the Court's determination that the Settlement set forth in the Agreement is within the range of
8 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
9 Procedure and California Rules of Court, rule 3.769.

10 2. This Order incorporates by reference the definitions in the Agreement, and all
11 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

12 3. The Total Settlement Amount that Defendant shall pay is Two Million Dollars
13 (\$2,000,000). It appears to the Court on a preliminary basis that the settlement amount and terms
14 are fair, adequate and reasonable as to all potential Class Members when balanced against the
15 probable outcome of further litigation and the significant risks relating to certification, liability and
16 damages issues. It further appears that investigation and research have been conducted such that
17 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
18 to the Court that the Settlement will avoid substantial additional costs by all Parties, as well as
19 avoid the delay and risks that would be presented by the further prosecution of the Action. It
20 further appears that the Settlement has been reached as the result of serious and non-collusive,
21 arms-length negotiations.

22 4. The Court preliminarily finds that the Settlement appears to be within the range of
23 reasonableness of a settlement that could ultimately be given final approval by this Court. The
24 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
25 preliminarily finds that the monetary settlement awards made available to the Class is fair,
26 adequate, and reasonable when balanced against the probable outcome of further litigation and the
27 significant risks relating to certification, liability, and damages issues.

1 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
2 Total Settlement Amount, an award of litigation expenses incurred, not to exceed \$20,000, and
3 proposed Class Representative Service Payments to the two Plaintiffs in an amount not to exceed
4 \$12,500 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
5 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
6 evidence supporting these requests, including lodestar, prior to final approval.

7 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
8 representative treatment and certification of a class for settlement purposes only. This stipulation
9 will not be deemed admissible in this or any other proceeding should this Settlement not become
10 final. For settlement purposes only, the Court conditionally certifies the Class which consists of
11 both the California Class and the FCRA Class. The California Class is defined as all individuals
12 who were employed by Defendant in California and classified as non-exempt at any time during
13 the California Class Period. The "California Class Period" is from August 11, 2018 through July
14 28, 2023. The FCRA Class is defined as all individuals who applied to work for Defendant who
15 were classified as either exempt or non-exempt in the United States during the FCRA Class Period
16 for whom background checks were run using the same federal FCRA form as that contained on
17 page 2 of the forms provided to Plaintiff Spears. The "FCRA Class Period" is from August 11,
18 2020 through December 9, 2022.

19 7. The Court concludes that, for settlement purposes only, the Class meets the
20 requirements for certification under section 382 of the California Code of Civil Procedure in that:
21 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
22 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
23 community of interest amongst the members of the Class with respect to the subject matter of the
24 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
25 the Plaintiffs will fairly and adequately protect the interests of the members of the Class; (e) a
26 class action is superior to other available methods for the efficient adjudication of this controversy;

1 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are
2 adequate representatives of the Class.

3 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
4 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
5 Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug
6 Bhowmik De Blouw LLP as Class Counsel for the Class.

7 9. The Agreement provides for a PAGA Payment out of the Total Settlement Amount
8 of \$20,000, which shall be allocated \$37,500 to the Labor & Workforce Development Agency
9 (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
10 Agreement pursuant to the PAGA and \$12,500 will be distributed to the PAGA Members as
11 Individual PAGA Payments. “PAGA Members” are all individuals who were employed by
12 Defendant in California and classified as a non-exempt employee at any time during the PAGA
13 Period. The PAGA Period is from June 29, 2021 through July 28, 2023. Pursuant to Labor Code
14 section 2699, subdivision (1)(2), the LWDA will be provided notice of the Agreement and these
15 settlement terms. The Court finds the PAGA Payment to be reasonable.

16 10. The Court hereby approves, as to form and content, the Class Notice attached to the
17 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
18 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
19 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
20 and opportunity to object to the Settlement. The Court further finds that the distribution of the
21 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
22 the requirements of due process, is the best notice practicable under the circumstances, and shall
23 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
24 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
25 Notice Packet is returned because of an incorrect address, the Administrator will promptly search
26 for a more current address for the Class Member and re-mail the Class Notice Packet to any new
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1 address for the Class Member no later than seven (7) days after the receipt of the undelivered
2 Class Notice.

3 11. The Court hereby appoints ILYM Group as the Administrator. No later than
4 twenty (20) days after this Order, Defendant will provide the Class Data to the Administrator. The
5 Administrator will perform address updates and verifications as necessary prior to the first
6 mailing. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14)
7 days after receiving the Class Data, the Administrator will mail the Class Notice Packet to all
8 Class Members via first-class regular U.S. Mail to their last known address.

9 12. The Court hereby preliminarily approves the proposed procedure for exclusion
10 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
11 from the Class as provided in the Class Notice by following the instructions for requesting
12 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
13 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
14 Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline
15 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
16 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
17 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
18 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
19 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
20 shall be bound by all determinations of the Court, the Agreement and the Judgment. A Request
21 for Exclusion may only serve to effect an opt out as to that particular individual, and any attempt
22 to effect an opt-out of a group, class, or subclass of individuals is not permitted and will be
23 deemed invalid.

24 13. Any Class Member who has not opted out may appear at the final approval hearing
25 and may object or express the Member’s views regarding the Settlement, and may present
26 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
27 and determined by the Court as provided in the Notice. Class Members will have until the
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1 Response Deadline to submit their written objections to the Administrator. Written objections
2 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
3 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
4 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
5 Hearing to make an oral objection.

6 14. A final approval hearing shall be held before this Court on July 25, 2024 at 9:00
7 a.m. in Department 3 – Courtroom 2B at the San Mateo County Superior Court to hear the motion
8 for final approval and the motion for attorneys’ fees and costs, and to determine all necessary
9 matters concerning the Settlement, including: whether the proposed settlement of the Action on
10 the terms and conditions provided for in the Agreement is fair, adequate and reasonable and
11 should be finally approved by the Court; whether the Final Approval Order and Judgment should
12 be entered herein; whether the plan of allocation contained in the Agreement should be approved
13 as fair, adequate and reasonable to the Class Members; and to finally approve attorneys’ fees and
14 costs, service awards, and the fees and expenses of the Administrator. All papers in support of the
15 motion for final approval and the motion for attorneys’ fees, costs and service awards shall be
16 filed with the Court and served on all counsel no later than sixteen (16) court days before the
17 hearing and both motions shall be heard at this final approval hearing.

18 15. Neither the Settlement nor any exhibit, document, or instrument delivered
19 thereunder shall be construed as a concession or admission by Defendant in any way that the
20 claims asserted have any merit or that this Action was properly brought as a class or representative
21 action, and shall not be used as evidence of, or used against Defendant as, an admission or
22 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
23 omission by Defendant or with respect to the truth of any allegation asserted by any person.
24 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
25 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
26 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
27 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,

1 evidence of a presumption, concession, indication or admission by Defendant of any liability,
2 fault, wrongdoing, omission, concession or damage.

3 16. In the event the Settlement does not become effective in accordance with the terms
4 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
5 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
6 and the Parties shall revert to their respective positions as of before entering into the Agreement,
7 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
8 including all available defenses and affirmative defenses, and arguments that any claim in the
9 Action could not be certified as a class action and/or managed as a representative action . In such
10 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
11 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
12 the Agreement with respect to the effect of the Agreement if it is not approved.

13 17. The Court reserves the right to adjourn or continue the date of the final approval
14 hearing and all dates provided for in the Agreement without further notice to Class Members and
15 retains jurisdiction to consider all further applications arising out of or connected with the
16 proposed Settlement.

17 **IT IS SO ORDERED.**

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19 Dated: _____

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21 HON. SUSAN L. GREENBERG
22 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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