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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN MATEO

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

19 Plaintiff,

20 vs.

21 VITALANT, a Corporation; and DOES 1
22 through 50, inclusive,

23 Defendants.

CASE NO.: 22-CIV-03291

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: July 25, 2024

Hearing Time: 9:00 a.m.

Judge: Susan L. Greenberg

Dept: 3

Date Filed: August 22, 2022

Trial Date: Not yet set

1 The unopposed motion of Plaintiffs ChaMarie Spears and Kathleen Leonard (collectively
2 “Plaintiffs”) for an order finally approving the Class Action and PAGA Settlement Agreement
3 (“Agreement”) with Defendant Vitalant (“Defendant”), attorneys’ fees and costs, service
4 payments, and the expenses of the Administrator duly came on for hearing on July 25, 2024 before
5 the Honorable Susan L. Greenberg.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of San Mateo, and over all
13 Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiffs and a review of the
15 applicable law, the Court finds that the Total Settlement Amount of Two Million Dollars
16 (\$2,000,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, and the assistance of an experienced mediator in the settlement process, among other
21 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On March 22, 2024, the Court granted preliminary approval of the Settlement. At
24 this same time, the Court approved conditional certification of the Class for settlement purposes
25 only.
- 26
- 27
- 28

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Court-approved Class
3 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
4 about April 25, 2024. Mailing of the Class Notice to their last-known addresses was the best
5 notice practicable under the circumstances and was reasonably calculated to communicate actual
6 notice of the litigation and the proposed settlement to the Class. The Class Notice given to the
7 Class Members fully and accurately informed the Class Members of all material elements of the
8 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
9 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
10 fully with the laws of the State of California, the United States Constitution, due process and other
11 applicable law. The Class Notice fairly and adequately described the Settlement and provided
12 Class Members adequate instructions and a variety of means to obtain additional information.

13 7. The Response Deadline for opting out or submitting written objections to the
14 Settlement was June 24, 2024, which for re-mailings was extended by fourteen (14) days. There
15 was an adequate interval between notice and the deadline to permit Class Members to choose what
16 to do and to act on their decision. A full and fair opportunity has been afforded to the Class
17 Members to participate in this hearing, and all Class Members and other persons wishing to be
18 heard have had a full and fair opportunity to be heard. Class Members also have had a full and
19 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
20 Court determines that all Class Members who did not timely and properly submit a request for
21 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness of the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 Parties during an all-day mediation before David Rotman, an experienced mediator of wage and
27 hour class actions. There has been no collusion between the Parties in reaching the Settlement.

1 b. Plaintiffs and their counsel's investigation and discovery have been
2 sufficient to allow the Court and counsel to act intelligently.

3 c. Counsel for all Parties are experienced in similar employment class action
4 litigation. Plaintiffs' counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. No
6 objections were received. One (1) request for exclusion was received from California Class
7 Member and twelve (12) requests for exclusion were received from FRCA Class Members.

8 e. The participation rate was high. _____ California Class Members and
9 _____ FRCA Class Members will be mailed a settlement payment, representing 99.75% of the
10 overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

19 11. An award of \$666,666 for attorneys' fees, representing one-third of the Total
20 Settlement Amount, and \$20,000 for litigation costs and expenses, is reasonable, in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
23 and billing statement.

24 **Class Representative Service Payments**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$12,500 each to the Plaintiffs, subject to the Court's approval. The Court finds that Class
27 Representative Service Payments in the amount of \$12,500 each to the Plaintiffs are reasonable in
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1 light of the risks and burdens undertaken by the Plaintiffs in this litigation, the result achieved, and
2 for their time and effort in bringing and prosecuting this matter on behalf of the Class.

3 **Administration Expenses Payment**

4 13. The Administrator shall calculate and administer the payment to be made to the
5 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
6 Class Representative Service Payments to the Plaintiffs, issue all required tax reporting forms,
7 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
8 Administrator has documented \$33,495 in fees and expenses, and this amount is reasonable in
9 light of the work performed by the Administrator.

10 **PAGA Payment**

11 14. The Agreement provides for a PAGA Payment in the amount of \$50,000 out of
12 the Total Settlement Amount, which shall be allocated \$37,500 to the Labor & Workforce
13 Development Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties
14 paid under this Agreement pursuant to the PAGA and \$12,500 to be distributed to the PAGA
15 Members and allocated by (a) dividing the amount of the PAGA Members' 25% share of PAGA
16 Payment (\$12,500) by the total number of PAGA Pay Periods worked by all PAGA Members
17 during the PAGA Period and (b) multiplying the result by each PAGA Member's PAGA Pay
18 Periods. "PAGA Members" are all individuals who were employed by Defendant in California
19 and classified as a non-exempt employee at any time during the PAGA Period (June 29, 2021
20 through July 28, 2023). Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA was
21 provided notice of the Agreement and these settlement terms and has not indicated any objection
22 thereto. The Court finds the PAGA Payment to be reasonable.

23 **II.**

24 **ORDERS**

25 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

26 15. The Class is certified for the purposes of settlement only. The Class consists of
27 both the California Class and the FCRA Class, which are defined as follows:

1 The **California Class** is defined as: “all individuals who were employed by
2 Defendant in California and classified as non-exempt at any time during the
3 California Class Period.” The “California Class Period” is from August 11, 2018
through July 28, 2023.

4 The **FCRA Class** is defined as: “all individuals who applied to work for Defendant
5 who were classified as either exempt or non-exempt in the United States during the
6 FCRA Class Period for whom background checks were run using the same federal
FCRA form as that contained on page 2 of the forms provided to Plaintiff Spears.”
The “FCRA Class Period” is from August 11, 2020 through December 9, 2022.

7 16. All persons who meet the foregoing definition are members of the Class, except for
8 those individuals who filed a valid request for exclusion (“opt out”) from the Class. The one
9 California Class Member who request exclusion was Emily Terzic, and the twelve FCRA Class
10 Members who requested exclusion are: Cristiane C. Barbosa, Brandon Markham, Jasity Murphy,
11 Susanne Marschner, Bailey Burton, Kaitlyn Bilak, Cheryl Jackson, Jessie Daigle, Madilyn
12 Dennison, Rim Abdallah, Sharon Hartmann and Terry Fender.

13 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
14 best interest of the Class.

15 18. Class Counsel are awarded attorneys’ fees in the amount of \$666,666 and costs in
16 the amount of \$20,000. Class Counsel shall not seek or obtain any other compensation or
17 reimbursement from Defendant, Plaintiffs or members of the Class.

18 19. The payment of Class Representative Service Payments in the amount of \$12,500
19 each to the Plaintiffs is approved.

20 20. The payment of \$33,495 to the Administrator for its fees and expenses is approved.

21 21. The PAGA Payment of \$50,000 is approved and is to be distributed in accordance
22 with the Agreement.

23 22. Pursuant to Labor Code section 2699, subdivision (1)(2), Class Counsel shall
24 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
25 entry.

26 23. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this
27 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any

1 wrongdoing by Defendant or that this Action is appropriate for class or representative treatment
2 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
3 Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement
4 is, may be construed as, or may be used as an admission by or against Defendant of any fault,
5 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
6 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
7 evidence of, an admission or concession with regard to the denials or defenses by Defendant.
8 Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding
9 this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in
10 the Action as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel,
11 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
12 Claims and/or Released PAGA Claims.

13 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
14 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
15 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
16 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
17 to individual Class Members.

18 25. If the Agreement does not become final and effective in accordance with the terms
19 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
20 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
21 revert to their respective positions as of before entering into the Agreement, and expressly reserve
22 their respective rights regarding the prosecution and defense of this Action, including all available
23 defenses and affirmative defenses, and arguments that any claim in the Action could not be
24 certified as a class action and/or managed as a representative action.

25 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

26 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
27 Plaintiffs, and all members of the Class, shall take nothing in the Action.

1 27. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
2 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
3 supervise and adjudicate any dispute arising from or in connection with the distribution of
4 settlement benefits.

5 28. All Parties shall bear their own attorneys' fees and costs, except as otherwise
6 provided in the Agreement and in this Final Approval Order and Judgment.

7 29. Effective on the date when Defendant fully funds the Total Settlement Amount,
8 Plaintiffs, Participating Class Members, PAGA Members and the LWDA will release claims
9 against all Released Parties as follows:

10 (a) All Participating Class Members, on behalf of themselves and their
11 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
12 and assigns, release Released Parties from the Released Class Claims. "Released Class Claims"
13 means the following: for the California Class Members, all wage and hour Class claims that were
14 alleged, or reasonably could have been alleged, based on the wage and hour factual or legal
15 theories alleged in the Operative Complaint, including all of the following: (a) all class claims
16 stated in the Operative Complaint alleging violations of California Labor Code sections 201, 202,
17 203, 204, 210, 218, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198
18 and 2802; (b) all claims for unpaid wages, including claims for minimum, overtime, double-time
19 wages and incentive compensation, the alleged failure to pay for all time worked, the alleged
20 failure to pay for off the clock work, the alleged failure to pay for drug testing and other required
21 testing and examinations, the alleged failure to pay for temperature checks and symptom
22 questionnaires for Covid-19, the alleged failure to pay for all hours worked at correct rates,
23 including overtime at the correct rates including, but not limited to, the regular rate of pay, the
24 alleged improper rounding of time entries, the alleged failure to pay reporting time pay and the
25 alleged unlawful deductions from earned wages; (c) all claims for meal period violations,
26 including claims for late, short, interrupted, rounded, and missed meal periods and the failure to
27 pay premiums at all, or at the correct regular rates, and the alleged failure to properly record meal
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1 periods; (d) all claims for rest break violations, including claims for late, short, interrupted,
2 missed, or otherwise improperly controlled rest breaks and the failure to pay premiums at all or at
3 the correct regular rates; (e) all claims for unreimbursed expenses, including, but not limited to,
4 expenses incurred for personal cell phone usage, mileage, and home office expenses; (f) all claims
5 for improper or inaccurate itemized wage statements, including any alleged violations of Labor
6 Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Operative
7 Complaint, including the allegation that the wage statements lacked the total number of hours
8 worked and corresponding rates and the proper legal entity of the employer, and including claims
9 for injuries suffered therefrom; (g) all claims for the untimely payment of wages, including
10 regular, overtime, premium wages, paid sick leave, and reporting time pay to current employees
11 under sections 204 and 210 of the Labor Code; (h) all claims for the untimely payment of final
12 wages and associated waiting time penalties under sections 201 to 203 of the Labor Code Section;
13 (i) all claims for unpaid sick leave, including claims that paid sick leave was not paid at the correct
14 regular rate of pay; (j) all claims under the Business & Professions Code (including Section 17200
15 *et seq.*) premised on the facts, claims, and causes of action alleged in the Operative Complaint;
16 and (k) for the FCRA Class Members, all FCRA class claims pled or that could have been pled
17 based on the FCRA factual allegations contained in the Operative Complaint which occurred
18 during the FCRA Class Period. Except as expressly set forth in this Agreement, Participating
19 Class Members do not release any other claims, including claims covered by Plaintiff Spears'
20 Separation Agreement addressed herein, claims for vested benefits, wrongful termination,
21 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
22 security, workers' compensation, and Class claims based on facts occurring outside the Class
23 Period.

24 (b) All PAGA Members and the LWDA are deemed to release, on behalf of
25 themselves and their respective former and present representatives, agents, attorneys, heirs,
26 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
27 The "Released PAGA Claims" are all claims for PAGA civil penalties that were alleged, or
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1 reasonably could have been alleged, based on the facts or legal theories alleged in the Operative
2 Complaint and the PAGA Notice, which occurred during the PAGA Period, including the
3 following: (a) all claims for civil penalties stated in the Operative Complaint alleging violations of
4 sections 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512,
5 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
6 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure
7 to Provide Seating), and applicable Industrial Welfare Commission Wage Order(s) including
8 Industrial Wage Order 7(A)(3); (b) all claims for civil penalties for violations of unpaid wages,
9 including unpaid minimum, overtime, double-time wages and incentive compensation, the alleged
10 failure to pay for all time worked, the alleged failure to pay for off the clock work, the alleged
11 failure to pay for drug testing and other required testing and examinations, the alleged failure to
12 pay for temperature checks and symptom questionnaires for Covid-19, the alleged failure to pay
13 for all hours worked at correct rates, including overtime at the correct rates including, but not
14 limited to, the regular rate of pay, the alleged improper rounding of time entries, and the alleged
15 unlawful deductions from earned wages; (c) all claims for civil penalties for meal period
16 violations, including late, short, interrupted, rounded, and missed meal periods and the failure to
17 pay premiums at all, or at the correct regular rates, and the alleged failure to properly record meal
18 periods; (d) all claims for civil penalties for rest period violations, including late, short,
19 interrupted, missed, or otherwise improperly controlled rest breaks and the failure to pay
20 premiums at all or at the correct regular rates; (e) all claims for civil penalties for unreimbursed
21 expenses, including, but not limited to, expenses incurred for personal cell phone usage, mileage,
22 and home office expenses; (f) all claims for civil penalties for inaccurate itemized wage
23 statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the
24 facts and legal theories contained in the PAGA Notice, including the allegation that the wage
25 statements lacked the total number of hours worked and corresponding rates and the proper legal
26 entity of the employer; (g) all claims for civil penalties for the untimely payment of wages,
27 including regular, overtime, premium wages, paid sick leave, and reporting time pay to current
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1 employees under sections 204 and 210 of the Labor Code; (h) all claims for civil penalties for the
2 untimely payment of final wages and associated waiting time penalties under sections 201 to 203
3 of the Labor Code Section; (i) all claims for civil penalties for unpaid sick leave, including claims
4 that paid sick leave was not paid at the correct regular rate of pay; (j) all claims for civil penalties
5 for failing to provide suitable seating; (k) all claims for civil penalties for alleged violations of
6 Industrial Wage Order 7(A)(3) for failure to keep time records showing when employees began
7 and ended each shift and meal period; and (l) all claims for civil penalties for the alleged failure to
8 pay employees for reporting time pay. The Released PAGA Claims do not include other PAGA
9 claims, underlying wage and hour claims, claims for wrongful termination, discrimination, claims
10 covered by Plaintiff Spears' Separation Agreement addressed herein, claims for vested benefits,
11 wrongful termination, violations of the Fair Employment and Housing Act, unemployment
12 insurance, disability, social security, and worker's compensation, and PAGA claims outside of the
13 PAGA Period.

14 (c) Plaintiffs and their respective former and present spouses/domestic partners,
15 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
16 and discharge Released Parties from all claims, transactions, or occurrences that occurred through
17 the Effective Date, including, but not limited to: all known and unknown claims against the
18 Released Parties, including any Released Class Claims and Released PAGA Claims as well as all
19 other wage and hour claims, claims under California Business & Professions Code section 17200,
20 claims under the Labor Code, including, but not limited to, claims under the Private Attorneys
21 General Act ("PAGA"), claims under the Fair Labor Standards Act ("FLSA"), and all claims for
22 indemnity or reimbursement of business expenses, overtime compensation, minimum wages,
23 penalties, liquidated damages, and interest, and all other claims under state, federal, and local
24 laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family and
25 Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the
26 Employee Retirement Income Security Act of 1974, and all of their implementing regulations and
27 interpretive guidelines, as well as the common law, including laws related to discrimination,
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1 harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated,
2 arising from or relating to each Plaintiff's relationship, or termination of relationship, with any
3 Released Party through the date of Final Approval for any type of relief, as fully set forth in the
4 Agreement.

5 30. For any Class Member or PAGA Member whose Individual Class Payment check
6 or Individual PAGA Payment check is uncashed and cancelled after the void date, the
7 Administrator shall transmit the funds represented by such checks to the California Controller's
8 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
9 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

10 31. The Court hereby enters judgment in the entire Action as of the filing date of this
11 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
12 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
13 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
14 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

15 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

16
17 Dated: _____

18
19 _____
HON. SUSAN L. GREENBERG
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA