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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER

MAR 07 2024

DAVID H. YAMASAKI, Clerk of the Court

BY: D. MIRANDA, DEPUTY

7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

10 JAMES VINCENT GUTIERREZ, individually,
 and on behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 AMERICAN FAMILY HOUSING, a California
 14 Corporation; and DOES 1 through 10, inclusive,

15 Defendants

Case No.: 30-2022-01283058-CU-OE-CXC

[Assigned to the Hon. Lon F. Hurwitz,
 Department CX103]

**~~REVISED [PROPOSED]~~ ORDER AND
 JUDGMENT GRANTING PLAINTIFF'S
 MOTION TO APPROVE SETTLEMENT
 AGREEMENT AND RELEASE OF PAGA
 CLAIMS PURSUANT TO LABOR CODE
 SECTIONS 2698 ET SEQ.**

Date: March 1, 2024

Time: 1:30 p.m.

Complaint Filed: September 22, 2022

Trial Date: Not Yet Set

**~~PROPOSED~~ ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION TO APPROVE
 SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS PURSUANT TO LABOR
 CODE SECTIONS 2698 ET SEQ.**

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

2. The Court finds that it has jurisdiction over the subject matter of the action and over all Parties to the action, including all PAGA Settlement Members;

4. The Court finds that Plaintiff submitted the Proposed Settlement Agreement and Release of PAGA Claims to the California Labor Workforce Development Agency (“LWDA”) on October 18, 2023, thereby satisfying the administrative requirements for seeking approval of the Settlement;

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~~PROPOSED~~ ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS PURSUANT TO LABOR CODE SECTIONS 2698 *ET SEQ.*

1 amount offered in settlement; the extent of investigation and discovery completed; and the
2 experience and views of counsel. The Parties have provided the Court with sufficient
3 information about the nature and magnitude of the claims being settled, as well as the
4 impediments to recovery, to make an independent assessment of the reasonableness of the terms
5 to which the Parties have agreed;

6 6. Accordingly, the Settlement (ROA #52) is hereby accepted and approved;

7 7. Plaintiff and all PAGA Settlement Members shall have, by operation of this Final
8 Order and Judgment, fully, finally, and forever released, relinquished, and discharged the
9 Released Parties from all Released Claims as follows:

10 **“Released Claims”** shall mean all claims or causes of action for civil
11 penalties that were, or could have reasonably been asserted based on the
12 facts in Plaintiff’s September 18, 2022 letter to the LWDA or the Operative
13 Complaint, that arose during the PAGA Period, including but not limited to
14 alleged: failure to pay minimum wages, failure to pay overtime
15 compensation, failure to provide meal periods, failure to pay meal
16 premiums, failure to authorize and permit rest breaks, failure to pay rest
17 premiums, failure to indemnify necessary business expenses, failure to pay
all earned wages twice per month, failure to maintain accurate payroll
records and records of hours worked and meal periods taken or missed,
failure to timely pay final wages at termination, failure to timely pay accrued
vacation wages at termination, and failure to provide accurate itemized wage
statements.

18 **“Released Parties”** shall mean Defendant, and all of its current, past,
19 present, and/or future subsidiary companies, affiliates, holding companies,
20 successors, partners, shareholders, insurers, legal representatives, assigns,
21 employees, benefit plan administrators, vendors, officers, directors,
22 attorneys, agents, successors and predecessors in interest, parents, as well as
any individual or entity that could be jointly liable with Defendant or any
other Released Party.

23 8. This Judgment shall be binding on all PAGA Settlement Members and the State
24 of California, who are hereby barred by the doctrine of res judicata from re-litigating the
25 Released PAGA Claims that accrued during the PAGA Period.

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27 **“PAGA Period”** shall mean September 22, 2021 through August 15, 2023.

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

10. The Settlement is not an admission by Defendant as defined below, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be used as an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

11. The Settlement Administrator will pay the PAGA Members, Plaintiff's counsel, the Labor and Workforce Development Agency ("LWDA"), and the Settlement Administrator pursuant to the terms of the Settlement:

- a. Actual administration costs of up to \$3,000.00, payable to Phoenix Settlement Administrators for the administration of the Settlement;
- b. Attorneys' fees to Plaintiff's Counsel in the amount of \$30,833.33 (33 1/3%);
- c. Reimbursement for actual costs incurred by Plaintiff's Counsel in the amount of \$13,101.49; and
- d. The remaining amount to the PAGA Fund, which shall be allocated as set forth in Labor Code § 2699(d), with 75% allocated to the LWDA, and the remaining 25% to the PAGA Settlement Members on a pro-rata share based on the proportional number of pay periods worked by each PAGA Settlement Member during the PAGA Period, as provided for in the Settlement.

12. The Court finds that these amounts and the distribution formula as set forth in the Settlement is fair, adequate, and reasonable, and orders that payment be made to the LWDA and the PAGA Settlement Members in accordance with the terms of the Settlement.

13. PAGA Settlement Members shall have 180 calendar days after the date the PAGA Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's check is not cashed within that period, the settlement payment check will be voided and a stop-payment will be issued. Neither Defendant, Defendant's Counsel, Plaintiff, nor

1 PAGA Counsel will have any liability for lost or stolen settlement payment checks, forged
2 signatures on settlement payment checks, unauthorized negotiation of settlement payment
3 checks or failure to timely cash a settlement payment check within the 180-day period. Any
4 unpaid cash residue or unclaimed Aggrieved Employee funds, plus any accrued interest that
5 has not otherwise been distributed pursuant to order of the Court, shall be transmitted to
6 California State Controller's Office for Unclaimed Property in the name of each Aggrieved
7 Employee who failed to cash their Individual PAGA Payment prior to the void date.

8 14. "Effective Date" refers to the date the Court enters an order approving this
9 Agreement.

10 15. Within thirty (30) days after the Effective Date, Defendant will compile a
11 PAGA Settlement Member list containing the following information for each PAGA
12 Settlement Member: (1) name; (2) last known home address and telephone number; (3)
13 number of pay periods as a PAGA Settlement Member during the PAGA Period; and (4)
14 social security number. The PAGA Settlement Member list will be produced confidentially,
15 and can only be used by the parties and the Settlement Administrator for purposes of settling
16 the case and to effectuate the terms of the Settlement.

17 16. Within seven (7) days after the Settlement Administrator receives the PAGA
18 Settlement Member list, the Settlement Administrator will provide to PAGA Counsel and
19 Defendant's Counsel a Proceeds List reflecting the Individual PAGA Payment amount for
20 each Aggrieved Employee ("Proceeds List"). The Proceeds List provided to PAGA counsel
21 will not include the Aggrieved Employees' names, social security numbers, or contact
22 information.

23 17. Defendant shall fund the Gross Settlement Amount including the court-
24 approved PAGA Counsel's Attorneys Fees and Costs, Settlement Administration Costs,
25 LWDA Payment, and the PAGA Aggrieved Employee Payment within thirty (30) days after
26 approval of the PAGA Settlement.

1 18. No later than seven (7) days after the Gross Settlement Amount is fully funded,
2 the Settlement Administrator will mail to each PAGA Member a letter attached to the
3 Settlement, Exhibit A, along with their respective settlement check.

4 19. No later than seven (7) days after the Gross Settlement Amount is fully funded,
5 the Settlement Administrator will distribute the court-approved PAGA Counsel's Attorneys
6 Fees and Costs, settlement administration costs, LWDA Payment, and the PAGA Aggrieved
7 Employees' Payment.

8 20. The Court hereby confirms Kane Moon and Enzo Nabiev of Moon Law Group,
9 PC as PAGA counsel.

10 21. The Court finds that the fees requested by Plaintiff's counsel of \$30,833.33 (33
11 1/3%) of the total settlement amount is reasonable, and the costs requested of up to \$16,000.00
12 were reasonable and necessary for the prosecution of this action. The Court hereby awards
13 attorney's fees in the amount of \$30,833.33 and costs in the amount of \$13,101.49 to Plaintiff's
14 counsel for their attorneys' costs. The payment of fees and costs to Plaintiff's counsel shall be
15 made in accordance with the terms of the Settlement.

16 22. The Court approves Phoenix Settlement Administrators as the Settlement
17 Administrator.

18 23. The Court approves of the proposed letter attached to the Settlement, Exhibit A,
19 to be sent to PAGA Members along with their respective settlement check.

20 24. This action is dismissed with prejudice.

21 25. Plaintiff shall submit a copy of this Order and Judgment to the LWDA within ten
22 (10) calendar days after entry of the Order and Judgment.

23 26. Without affecting the finality of the Order and Judgment, this Court shall retain
24 jurisdiction, pursuant to California Code of Civil Procedure section 664.6, over this action, the
25 Parties, and the PAGA Settlement Members to the fullest extent necessary to interpret, enforce,
26 and effectuate the terms and intent of the Settlement and this Order and Judgment.

1 27. The Court sets a status conference re: final accounting for January 8, 2025. At
2 least nine (9) court days prior to the hearing, Plaintiff shall submit a final report including the
3 actual amounts paid to aggrieved employees, the other amounts distributed under the settlement,
4 and the amounts tendered to the Unclaimed Property Division.

5
6 **IT IS SO ORDERED.**

7 MAR 07 2024
8 Dated: _____

9 By:  _____
10 Honorable Lon F. Hurwitz
11 Judge of the Superior Court