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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

MARK FRANKLIN on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

DESERT HAVEN ENTERPRISES; and
DOES 1-100,

Defendants.

Case No. BCV-23-101153
(Consolidated with Case No. BCV-23-101829)

*[Assigned for All Purposes to the
Honorable Gregory A. Pulskamp; Div. J]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF MARK FRANKLIN’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE**

Date: June 26, 2024
Time: 8:30 a.m.
Division: J
Location: 1215 Truxton Avenue
Bakersfield, California 93301

Complaint Filed: April 13, 2023
Trial Date: None Set

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action (the “Action”).
3 Plaintiff Mark Franklin has applied to this Court for an order preliminarily approving the
4 settlement of the Action in accordance with the Joint Stipulation and Settlement Agreement (the
5 “Agreement”), which together with the exhibit annexed thereto, sets forth the terms and conditions
6 for a proposed settlement and entry of judgment upon the terms and conditions set forth therein.
7 The Court has read and considered the Memorandum of Points and Authorities in support of
8 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, Conditional Certification,
9 Approval of Class Notice, Setting of Final Approval Hearing Date; Declaration of David Mara,
10 Esq., in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, and
11 attached exhibits; and the Declaration of Peter Horton, Esq. For purposes of this Order, the Court
12 adopts all defined terms as set forth in the Agreement.

13 **II. FINDINGS**

14 After review and consideration of the Agreement and Plaintiff’s motion for preliminary
15 approval and the papers in support thereof, the Court hereby finds and orders as follows:

16 1. The Agreement falls within the range of reasonableness meriting possible final
17 approval.

18 2. The certification of the Class solely for purposes of settlement is appropriate in that:
19 (1) the Class Members are ascertainable and so numerous that joinder of all Class Members is
20 impracticable; (2) there are questions of law and fact common to the Class which predominate
21 over any individual questions; (3) Plaintiff’s claims are typical of the claims of the Class; (4)
22 Plaintiff and his Counsel have fairly and adequately represented and protected the interests of the
23 Class; and (5) a class action, and class-wide resolution of the action via class settlement procedures
24 is superior to other available methods for the fair and efficient adjudication of the controversy.

25 3. The Agreement, and the obligations of the Parties as set forth therein, is fair,
26 reasonable, and is an adequate settlement of this case and is in the best interests of the Class in
27 light of the factual, legal, practical, and procedural considerations raised by this case.
28

1 4. Plaintiff does not have any conflicts that would preclude him from serving as Class
2 Representative, and his appointment comports with the requirements of due process.

3 5. Class Counsel does not have any conflicts that would preclude them from acting as
4 Class Counsel, and they meet the requirements for appointment as Class Counsel and the
5 requirements of due process.

6 6. The notice of proposed class action settlement attached as Exhibit A to the
7 Agreement complies with due process because the notice of proposed class action settlement is
8 reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the
9 terms of the proposed Agreement; and (iii) their rights, including the right to either participate in
10 the settlement, exclude themselves from the settlement, or object to the settlement. Plaintiff's
11 proposed plan for class notice and settlement administration is the best notice practicable under
12 the circumstances.

13 **III. ORDER**

14 The Court having considered the papers submitted in support of the motion for preliminary
15 approval, HEREBY ORDERS THE FOLLOWING:

16 1. The Court finds on a preliminary basis that the provisions of the Agreement are
17 fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

18 2. The following Class is conditionally certified for purposes of settlement only: All
19 non-exempt, hourly employees of Defendant in the State of California from April 13, 2019 through
20 June 1, 2024, and includes, but is not limited to, job positions Defendant refers to as Trainers and
21 Consumers.

22 3. The Agreement provides for the following release as to Participating Class
23 Members,¹ which is hereby approved conditionally: The Participating Class Members will, upon
24 the Effective Date,² release all claims during the Class Period that were pled or could have been

25 _____
26 ¹ Participating Class Members are all Class Members who do not submit a valid and timely request
to exclude themselves from this Settlement.

27 ² The Effective Date is later of the time when: (i) The date the Court enters Judgment granting
28 final approval of the settlement, if there are no objectors at the time of the final approval hearing;
(ii) if there are objectors at the time of the final approval hearing, the date by which an appeal of

1 pled based on a reasonable interpretation of the facts included in the operative complaint.

2 4. The settlement also encompasses PAGA Group Members defined as: All non-
3 exempt, hourly employees of Defendant in the State of California from April 7, 2022 through June
4 1, 2024, and includes, but is not limited to, job positions Defendant refers to as Trainers and
5 Consumers.

6 5. The Agreement provides for the following release as to PAGA Group Members,
7 which is hereby approved conditionally: The PAGA Group Members will, upon the Effective Date,
8 release all claims during the PAGA Period for civil penalties that were pled or could have been
9 pled based on a reasonable interpretation of the facts included in the operative complaint. Further,
10 the State of California will release all claims raised in the PAGA demand letter submitted to the
11 Labor and Workforce Development Agency on or about April 7, 2023.

12 6. The settlement appears to be fair, adequate and reasonable to the Class. The
13 settlement falls within the range of reasonableness and appears to be presumptively valid, subject
14 only to any objections that may be raised at the final approval hearing and final approval by this
15 Court.

16 7. Plaintiff Mark Franklin is conditionally approved as the Class Representative for
17 the Class.

18 8. The proposed Class Representative Enhancement Payment of \$15,000 payable to
19 Plaintiff Mark Franklin for his services as class representative is conditionally approved.

20 9. Mara Law Firm, PC, and Lawyers for Employee and Consumer Rights are
21 conditionally approved as Class Counsel for the Class.

22 10. The proposed awards of up to \$612,500 in attorneys' fees and up to \$50,000 in
23 actual costs payable to Class Counsel are conditionally approved.

24 11. A final approval hearing on the question of whether the settlement, attorneys' fees
25 and costs to Class Counsel, and the Class Representative Enhancement Payment should be finally

26 _____
27 the judgment must occur, if no notice of appeal is filed; or (iii) if there is a timely notice of appeal
28 filed, the date of final affirmance of the Judgment on an appeal, the expiration of the time for, or
the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance
of the Judgment following review pursuant to that grant.

1 approved as fair, reasonable and adequate as to Class Members is scheduled in Division J on the
2 date and time set forth in the Implementation Schedule below.

3 12. The Court confirms APEX Class Action Administration as the Settlement
4 Administrator.

5 13. The proposed payment of up to \$10,000 in costs to APEX Class Action
6 Administration for its services as the Settlement Administrator is conditionally approved.

7 14. The Court also hereby conditionally approves and orders payment from the Gross
8 Settlement Fund of the PAGA Payment of \$75,000 (75% of which shall be paid to the Labor and
9 Workforce Development Agency, and 25% of which shall become part of the Net Settlement Fund
10 distributable to PAGA Group Members).

11 15. The Court approves, as to form and content, the notice of class action settlement in
12 substantially the form attached as Exhibit A to the Agreement. The Court approves the procedure
13 for Class Members to participate in, to opt out of, and to object to, the settlement as set forth in the
14 notice.

15 16. The Court directs the mailing of the notice of class action settlement by first class
16 mail to Class Members in accordance with the Implementation Schedule below. The Court finds
17 the dates selected for the mailing and distribution of the notice, as set forth in the Implementation
18 Schedule, meet the requirements of due process and provide the best notice practicable under the
19 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

20 16. To facilitate administration of the settlement pending final approval, the Court
21 hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or
22 administrative proceedings (including, but not limited to, filing claims with the Division of Labor
23 Standards Enforcement of the California Department of Industrial Relations) regarding claims
24 released by the Agreement unless and until such Class Members have filed valid Requests for
25 Exclusion with the Settlement Administrator and the time for filing valid Requests for Exclusion
26 with the Settlement Administrator has elapsed. This provision shall not apply to claims not alleged
27 in the Action.
28

IV. IMPLEMENTATION SCHEDULE

The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to submit Class Data to Settlement Administrator	10 business days after entry of this Order
Deadline for Settlement Administrator to Mail the Class Notice to Class Members	10 business days after receipt of the Class Data
Deadline for the Settlement Administrator to Set Up a Settlement Website	10 business days after receipt of the Class Data
Deadline for Class Members to Postmark Requests for Exclusion	45 calendar days after mailing of Notice to Class Members
Deadline for Class Members to Postmark Objections to the Settlement	45 calendar days after mailing of Notice to Class Members
Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment	16 court days before Final Approval Hearing
Final Approval Hearing and Final Approval	_____, 2024, at _____

IT IS SO ORDERED.

Dated: _____, 2024

By _____
Honorable Gregory A. Pulskamp
Superior Court Judge