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10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**

12 **FOR THE COUNTY OF PLACER**

13 ANTHONY AFFATATO, individually and on
14 behalf of all other similarly situated
15 employees,

16 Plaintiff,

17 vs.

18 SIERRA VIEW COUNTRY CLUB, a
19 California Corporation; SIERRA VIEW
20 LAND COMPANY, a California Corporation;
21 and DOES 1 to 100, inclusive,

22 Defendant.

Case No. S-CV-0050664

CLASS ACTION

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: January 30, 2025

Time: 8:30 a.m.

Dept.: 3

Judge: Hon. Michael Jones

Filed: June 13, 2023

FAC Filed: September 7, 2023

SAC Filed: June 17, 2024

Trial Date: None Set

Filed - 02/03/2025

Electronically filed by Superior Court of California
County of Placer on 02/03/2025
Jake Chatters, Clerk of the Court
By B. Baldock Deputy Clerk

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on January 30, 2025, at 8:30 a.m., in Department 3 before the
4 Honorable Michael Jones, presiding. Plaintiff Anthony Affatato (“Plaintiff”) filed this putative class
5 action on June 13, 2023. The operative Complaint alleges that Defendant Sierra View Land Company
6 dba Sierra View Country Club (“Defendant”) violated California law by 1) failing to pay overtime
7 wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu
8 thereof, 4) failing to provide rest periods or pay premiums in lieu thereof, 5) failing to provide accurate
9 wage statements , 6) failing to pay final wages, , 7) failing to reimburse expenses, and 8) engaging in
10 unfair competition. Plaintiff has also alleged Defendant is liable for civil penalties under the Private
11 Attorney’s General Act (“PAGA”) based on these violations. Plaintiff sought attorney’s fees and costs
12 as part of this Action. Defendant denies all of Plaintiff’s claims and denies that this case was
13 appropriate for class treatment other than for purposes of settlement. No class has been certified. The
14 class settlement was preliminarily approved by this Court on October 17, 2024.

15 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
17 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
18 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
19 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of
20 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
21 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
22 FOLLOWS:

23 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
24 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All individuals who have worked, or continue to work, for Defendant in
28 California as a non-exempt employee at any time between June 13, 2019,
and April 11, 2024.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement. A “Class Member” shall not include any of the individuals who timely opted out of the
4 Settlement as identified in paragraph 11 of the declaration of Nick Castro. These individuals shall not
5 be bound by the Agreement or any of the releases or obligations therein except for the releases and
6 covenants regarding to the PAGA claims as set forth in section 1.31 and 6.2 as they are still Aggrieved
7 Employees under the Agreement and there is no ability to opt out of a PAGA settlement.

8 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
9 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
10 records, individuals who fall within the definition and the number of Class Members would make
11 joinder impractical. The commonality and predominance requirements are met for settlement purposes
12 since there are questions of law and fact common to Class Members. The common questions of law or
13 fact in this case all stem from Plaintiff’s contentions that Defendant caused the violations outlined above
14 by 1) failing to pay Plaintiff and similarly situated employees all minimum wages and overtime wages
15 due to managers failing to pay Plaintiff and similarly situated employees for working off-the-clock, 2)
16 failing to incorporate the value of the mandatory service charges into the regular rate of pay in
17 calculating Plaintiff’s and similarly situated employees’ premium wages, including meal and rest period
18 premiums, overtime, sick leave, 3) failing to authorize and permit Plaintiff and similarly situated
19 employees to take all meal and rest periods owed to them, 4) changing Plaintiff’s and similarly situated
20 employees’ timecards to show that Plaintiff and similarly situated employees took compliant meal and
21 rest periods when, in fact, they had not, 5) failing to pay all hours worked because of rounding
22 Plaintiff’s and similarly situated employees’ hours worked, including but not limited to, meal period
23 clock-ins and clock-outs, and 6) failing to reimburse Plaintiff and similarly situated employees for using
24 their cell phones, for work purposes. The PAGA, waiting time penalty, wage statement violation, and
25 unfair competition claims also derive from these violations. Additionally, Class Members seek the
26 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
27 the claims of the Class Representative is based on the same facts and legal theories as those applicable to
28 the class members.

1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This Settlement will achieve economies of scale for Class
3 Members with relatively small individual claims and conserve the resources of the judicial system.

4 The Court finds that Plaintiff Anthony Affatato and Plaintiff's counsel, Galen T. Shimoda
5 Justin P. Rodriguez, Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate representatives of
6 the settlement class. The Court appoints them as Class Representative and Class Counsel, respectively.

7 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

8 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
9 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls
10 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
11 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
12 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
13 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
14 were able to object to the Agreement and its terms through the administrative process and at a fairness
15 hearing or opt-out of being bound by the preliminarily approved Agreement.

16 No objections were made by Class Members and less than two percent (2%) of Class Members
17 opted out of the settlement. Because the Court finds the Parties' settlement to have been agreed upon
18 only after an extensive investigation and arms-length negotiations, and in an attempt to avoid further
19 delays and costs, the Court gives final approval to the Agreement and all terms therein as if stated here
20 in full, including the \$380,000 Gross Settlement Amount.

21 Class Counsel sought an award of attorneys' fees of \$133,000, attorney's costs of \$10,837.44, an
22 Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement
23 Administrator Costs in the amount of \$7,950. Defendants do not oppose these requests. The Notice of
24 Settlement sent to Class Members included information regarding these amounts and that they would be
25 requested in connection with final approval of the Agreement. Class Members have been given the
26 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.

27 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
28 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that

1 Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced
2 as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee
3 request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half*
4 *Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271
5 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a
6 common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee
7 from the fund as a whole.”). The Court finds the attorneys’ fees request of Thirty Five Percent (35%) of
8 the Gross Settlement Amount, *i.e.* \$133,500, to be appropriate compensation for Plaintiff’s Counsel.
9 The attorneys’ fees request is within the range of percentages that have been approved by other Courts
10 in similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial
11 results obtained on behalf of Class Members, Aggrieved Employees and the LWDA, and the contingent
12 nature of the recovery over the course of this case, which included potential loss at summary judgment
13 and/or trial proceedings. Additionally, the Court orders that \$10,837.44 of the Gross Settlement Amount
14 will be paid to Plaintiff’s Counsel for reasonable costs incurred in this case.

15 The Court orders and approves ILYM Group, Inc., to act as the Settlement Administrator in this
16 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are
17 \$7,950. Any difference between the actual Settlement Administrator Costs and the maximum amount
18 allocated under the Agreement will be added to the Net Settlement Amount for distribution between the
19 Participating Class Members pro rata as set forth in the Agreement.

20 The Court orders that Plaintiff will receive an Enhancement Payment of \$10,000 from the Gross
21 Settlement Amount for his work on behalf of the Class Members, Aggrieved Employees and the LWDA
22 and in exchange for his general release of all his individual claims in addition to any amount Plaintiff
23 may be entitled to under the Agreement’s pro rata distribution formula.

24 The Court approves of the Twenty Thousand Dollar (\$20,000) PAGA Payment, which shall be
25 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
26 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
27 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
28 Employees on a pro rata basis as described in the Agreement. The Court also finds that based on the

facts of this case and the disputed issues, the Agreement provides a recovery that creates an effective, substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendant for any reason.

The releases and waivers for Class Members who do not opt out of being bound by the Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are also approved by the Court as set forth in the Agreement.

III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS, INCLUDING THE NOTICE OF SETTLEMENT

The Court finds that the Notice of Settlement, filed with the Motion as Exhibit A to the Declaration of Nick Castro, fairly and adequately advised Class Members of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: February 2, 2025

By: 
Michael W. Jones
 Judge of the Superior Court