

1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (State Bar #277924)
3 5440 Morehouse Drive, Suite 3600
4 San Diego, CA 92121
5 Telephone: (619) 255-9047
6 Facsimile: (858) 404-9203
7 Website: www.zakaylaw.com

8 **JCL LAW FIRM, APC**
9 Jean-Claude Lapuyade (State Bar #248676)
10 5440 Morehouse Drive, Suite 3600
11 San Diego, CA 92121
12 Telephone: (619) 559-8292
13 Facsimile: (619) 559-8291
14 Website: www.jcl-lawfirm.com

15 Attorneys for Plaintiff

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SACRAMENTO**

19 **DIONYSIOS YURI SHALLAN**, an individual,
20 on behalf of himself and on behalf of all persons
21 similarly situated,

22 Plaintiff,
23 v.

24 **SCOTT'S SACRAMENTO RIVER, INC.**, a
25 California corporation; and **DOES 1** through 50,
26 inclusive,

27 Defendants.

CASE NO. 34-2020-00288630

CLASS ACTION

**PROPOSED ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: January 20, 2022
Time: 9:00am

Honorable Judge Christopher E. Krueger
Department 54

Trial Date: Not Set
Action Filed: November 16, 2020

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

The above-referenced class action ("Action") having come before the Court on January 20, 2022 for a hearing and Order Granting Final Approval of Class Action and PAGA Settlement and Judgement ("Final Order"), consistent with the Court's Preliminary Approval Order ("Preliminary Approval Order"), filed and entered September 9, 2021 and as set forth in the Joint Stipulation of Settlement and Release Between Plaintiff and Defendant ("Stipulation") in the Action, and due and adequate notice

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

FILED/ENDORSED

JAN 28 2022

By: G. Toda
DEPUTY CLERK



VIA FAX

1 having been given to all Class Members as required in the Preliminary Approval Order, and the Court
2 having considered all papers filed and proceedings had herein and otherwise being fully informed and
3 good cause appearing therefore, it is hereby **ORDERED, ADJUDGED AND DECREED AS**
4 **FOLLOWS:**

5 1. All terms used herein shall have the same meaning as defined in the Stipulation.

6 2. Consistent with the definitions provided in the Stipulation, the term "Class" and "Class
7 Members" shall mean the following: All of Defendant's current and former non-exempt banquet
8 employees who worked for Defendant in the State of California during the Class Period. The Class
9 Period is the period of time from March 24, 2016 and September 29, 2020. For purposes of the
10 Settlement and this Final Order, "Released Parties" as referenced herein and as released in the Settlement
11 shall collectively mean: Defendant and its respective present and former parent companies, subsidiaries,
12 divisions, related or affiliated companies and joint ventures, shareholders, officers, directors,
13 management level employees, agents, attorneys, insurers, reinsurers, successors and assigns.

14 3. This Court has jurisdiction over the subject matter of this Action and over all Parties to
15 this Action, including all Class Members.

16 4. Distribution of the Notice directed to the Class Members as set forth in the Stipulation
17 and the other matters set forth therein has been completed in conformity with the Preliminary Approval
18 Order, including notice to all Class Members who could be identified through reasonable effort, is the
19 best notice practicable under the circumstances. The Notice provided due and adequate notice of the
20 proceedings and of the matters set forth therein, including the proposed Settlement set forth in the
21 Stipulation, to all persons entitled to such Notice, and the Notice fully satisfied the requirements of due
22 process. All Class Members and all Released Claims are covered by and included within the Settlement
23 and this Final Order. The deadline for opting out or objecting was November 22, 2021. There was an
24 adequate interval between notice and deadline to permit Class Members to choose what to do and act on
25 their decision. Eight (8) Class Member opted out, and Zero (0) Class Members objected.

26 5. The Settlement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996)
27 48 Cal.App.4th 1794, 1801.). The Court hereby finds the Settlement was entered into in good faith
28 pursuant to and within the meaning of California Code of Civil Procedure section 877.6. The Court

1 further finds that the Settlement is fair, adequate, and reasonable and that Plaintiff has satisfied the
2 standards and applicable requirements for final approval of this class action settlement under California
3 law, including the provisions of California Code of Civil Procedure section 382 and Federal Rule of
4 Civil Procedure 23, approved for use by the California state courts in *Vasquez v. Superior Court* (1971)
5 4 Cal.3d 800, 821.

- 6 a) The Parties' settlement was reached through arm's-length bargaining between the
7 parties. There has been no collusion between the parties in reaching the proposed
8 settlement;
- 9 b) The Parties' investigation and discovery have been sufficient to allow the court
10 and counsel to act intelligently;
- 11 c) Counsel for the Plaintiff are experienced in similar employment class action
12 litigation and have previously settled similar class claims on behalf of employees
13 claiming wage and hour violations. All counsel recommended approval of the
14 Settlement;
- 15 d) The percentage of objectors is zero and percentage of requests for exclusion is
16 12.3%. No objections were received;
- 17 e) The participation rate was high. 87.7% of the Class Members will be mailed a
18 check for their Settlement Share;
- 19 f) The following Class Members opted-out: Tabitha Matsueda, Marek Albert,
20 Micah Albert, Denzell Washington, Waheed Alsbagh, Martez Albert, Tresa
21 Beardsley (French), and Christa Rion.
- 22 g) The Gross Settlement Amount to be paid by Defendant pursuant to the Settlement
23 equals \$102,500. The consideration to be given to the Class Members under the
24 terms of the Settlement is fair, reasonable and adequate considering the strengths
25 and weaknesses of the claims asserted in this action and is fair, reasonable and
26 adequate compensation for the Settlement of this action and release of the
27 Released Class Claims, given the uncertainties and risks of the litigation and the
28

1 delays which would ensue from continued prosecution of the action.

2 h) Defendant's payment of the Settlement Sum shall be made in installment
3 payments. Defendant will pay the first installment of the Settlement Sum within
4 30-calendar days after the Effective Date in the amount of \$77,500 of the Total
5 Settlement Amount in the QSF, as set forth fully in the Parties' Agreement and
6 supplement thereto. The remaining \$25,000 of the Total Settlement Amount shall
7 be made in equal monthly installment payments into the QSF, or to Class Counsel
8 directly upon closure of the QSF, consistent with the Parties' Settlement
9 Agreement over a 24-month period until fully paid.

10 6. The Court hereby approves the Settlement set forth in the Stipulation and finds that the
11 Settlement is, in all respects, fair, adequate and reasonable, and directs the Parties to effectuate the
12 Settlement according to its terms. The Court finds that the Settlement has been reached as a result of
13 intensive, serious and non-collusive arms-length negotiations before a well-respected class action
14 mediator. The Court further finds that the Parties have conducted extensive investigation and research,
15 and counsel for the Parties are able to reasonably evaluate their respective positions. The Court also
16 finds that Settlement at this time will avoid additional substantial costs, as well as avoid the delay and
17 risks that would be presented by the further prosecution of the Action. The Court has reviewed the
18 benefits that are being granted as part of the Settlement and recognizes the significant value to the Class
19 Members. The Court also finds that the Class is properly certified as a class for settlement purposes
20 only.

21 7. As of the date of entry of this Final Order and the Effective Date as defined in the
22 Stipulation, each and every Released Claim (as defined in the Stipulation and set forth below) of each
23 and every participating Class Member is and shall be deemed to be conclusively released as against the
24 Released Parties. As of the date of this Final Order, the Class Representative and each and every Class
25 Member who has not submitted a valid Request for Exclusion is hereby released and forever barred and
26 enjoined from prosecuting the Released Claims, except as to such rights or claims as may be created by
27 the Stipulation, against Defendant and the Released Parties. The Released Claims are defined as from
28

1 any and all claims, actions, demands, causes of action, suits, debts, obligations, guarantees, costs,
2 expenses, attorneys' fees, damages, restitution, injunctive relief, penalties, rights or liabilities, of any
3 nature and description whatsoever, arising during the Class Period or PAGA Class Period, that are
4 alleged in the operative complaint in the Action or that could have been alleged in the Action based on
5 the facts and theories alleged in the operative complaint in the Action, including but not limited to,
6 failure to pay minimum wage, straight time wages, and overtime wages, unpaid premium pay for
7 violations of California's meal period and rest break law, waiting time penalties, penalties for non-
8 compliant wage statements and failure to keep accurate payroll records, and failure to reimburse
9 employees for reasonably incurred business expenses, and failure to pay gratuities and claims pursuant
10 to Labor Code sections 201, 202, 203, 204, 206.5, 210, 225.5, 226, 226.3, 226.7, 350, 351, 510, 511,
11 512, 515, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and 2802, and claims under
12 Business and Professions Code section 17200, *et seq.* (collectively "Released Claims"). The release of
13 claims shall not include any claims that cannot be released as a matter of law.

14 In addition, as of the date of this Final Order, Plaintiff and the Settlement Class Members, fully
15 release and discharge Defendant and the Released Parties, as defined herein, from any and all claims,
16 actions, demands, causes of action, suits, debts, obligations, guarantees, costs, expenses, attorneys' fees,
17 damages, restitution, injunctive relief, penalties, rights or liabilities, of any nature and description
18 whatsoever, alleged or that could have been alleged based on the facts and theories alleged in the
19 operative complaint in the Action arising during the Class Period or PAGA Class Period, arising out of
20 the facts and claims asserted in the Action for civil penalties under the Private Attorney General Act of
21 2004 Cal. Labor Code § 2698 *et seq.* based upon the facts alleged in the operative complaint in the
22 Action, including but not limited to, failure to pay minimum wage, straight time wages, and overtime
23 wages, unpaid premium pay for violations of California's meal period and rest break law, waiting time
24 penalties, penalties for non-compliant wage statements and failure to keep accurate payroll records, and
25 failure to reimburse employees for reasonably incurred business expenses, and failure to pay gratuities.

26 8. Neither the Settlement nor any of the terms set forth in the Stipulation is an admission
27 by Defendant, or any of the other Released Parties, nor is this Final Order a finding of the validity of
28 any claims in the Action or of any wrongdoing by Defendant, or any of the other Released Parties.

1 Neither this Final Order, the Stipulation, nor any document referred to herein, nor any action taken to
2 carry out the Stipulation is, may be construed as, or may be used as, an admission by or against
3 Defendant, or any of the other Released Parties, of any fault, wrongdoing or liability whatsoever. The
4 entering into or carrying out of the Stipulation, and any negotiations or proceedings related thereto, shall
5 not in any event be construed as, or deemed to be evidence of, an admission or concession with regard
6 to the denials or defenses by Defendant, or any of the other Released Parties, and shall not be offered in
7 evidence in any action or proceeding in any court, administrative agency or other tribunal for any
8 purpose whatsoever other than to enforce the provisions of this Final Order, the Stipulation, the Released
9 Claims, or any related agreement or release. Notwithstanding these restrictions, any of the Released
10 Parties may file in the Action, or submit in any other proceeding, the Final Order, the Stipulation, and
11 any other papers and records on file in the Action as evidence of the Settlement to support a defense of
12 *res judicata*, *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense
13 as to the Released Claims.

14 9. The Court hereby enters judgment in the entire Action as of the filing date of this Final
15 Order, pursuant to the terms set forth in the Stipulation. Without affecting the finality of this Final Order
16 in any way, the Court hereby retains continuing jurisdiction over the interpretation, implementation and
17 enforcement of the Settlement and all orders entered in connection therewith pursuant to California Code
18 of Civil Procedure section 664.6.

19 10. The Court finds the settlement payments provided for under the Settlement to be fair and
20 reasonable in light of all of the circumstances. The Court orders the calculations and the payments to
21 be made and administered in accordance with the terms of the Settlement.

22 11. The Court hereby confirms Shani O. Zakay of Zakay Law Group, APLC and Jean-Claude
23 Lapuyade of The JCL Law Firm, APC as Class Counsel in the Action.

24 12. The Court further finds that the common fund doctrine is applicable to this Action
25 because there is a sufficiently identifiable class of beneficiaries (the Class), the benefits can be accurately
26 traced to the Settlement that Plaintiff and Class Counsel negotiated on behalf of the Class, and the fee
27 can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage
28 of the common fund. *See Serrano v. Priest* (1977) 20 Cal.3d 25, 34-35. The Court finds the attorneys'

1 fees request of one-third (1/3) of the common fund to be appropriate compensation for Class Counsel.
2 The attorneys' fees request is within the range that has been approved by other Courts in similar cases
3 and reasonable in light of the circumstances of this case, the substantial and beneficial results obtained
4 on behalf of the Class, and the contingent nature of the recovery over the course of this Action, which
5 included potential loss at summary judgment, certification, and/or trial proceedings. Pursuant to the
6 terms of the Settlement, and the authorities, evidence and argument submitted by Class Counsel, the
7 Court hereby awards Class Counsel attorneys' fees in the amount of \$34,166.66, and attorneys' costs in
8 the amount of \$14,440.12 from the Gross Settlement Amount as final payment for and complete
9 satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel and any
10 other person or entity related to the Action. The Court further orders that the award of attorneys' fees
11 and costs set forth in this Paragraph shall be administered pursuant to the terms of the Settlement, and
12 made payable to and deposited into the bank accounts of Class Counsel in the Action. The allocation
13 and distribution of the Court-awarded attorneys' fees and costs is subject to a separate arrangement and
14 agreement between Class Counsel.

15 13. The Court also hereby approves and orders an Enhancement Award to Plaintiff and Class
16 Representative DIONYSIOS YURI SHALLAN in the amount of \$7,500 from the Gross Settlement
17 Amount.

18 14. The Agreement provides for a PAGA Payment of \$5,000, which is allocated 75% to the
19 LWDA and 25% to the Class Members as part of the Net Settlement Amount, which the Court finds to
20 be reasonable. The Court also hereby approves and orders payment in the amount of \$3,750.00 from the
21 Gross Settlement Amount for PAGA penalties, payable to the California Labor Workforce Development
22 Agency and payment in the amount of \$1,250.00 from the Gross Settlement Amount for PAGA
23 penalties, payable to the Class Members who worked for Defendant during the PAGA Period.

24 15. The Court also hereby approves and orders payment from the Gross Settlement Amount
25 for actual claims administration expenses incurred by the Claims Administrator in the amount of \$4,500.

26 16. The Court also hereby approves and orders that any residue from uncashed Settlement
27 Award checks after the expiration date will be paid out to the Children Advocacy Institute, a non-profit
28 501(c)(3) organization with child advocacy programs within the State of California, as the *cy pres*

1 recipient pursuant to Code of Civil Procedure section 384(b); any residue received by the Children
2 Advocacy Institute shall be used solely for child advocacy programs within the State of California
3 pursuant to Code of Civil Procedure section 384(b).

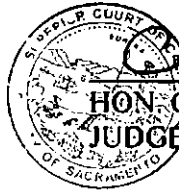
4 17. The Court also hereby finds and orders that the Settlement is and constitutes a fair,
5 adequate, and reasonable compromise of the Released Claims against Defendant and the Released
6 Parties.

7 18. Provided the Settlement becomes effective under the terms of the Stipulation, the Court
8 also hereby orders that the deadline for mailing the Court-approved Settlement Awards, attorneys' fees
9 and costs, and Enhancement Awards is as set forth in the Implementation Schedule within the
10 Preliminary Approval Order.

11 19. The Court also hereby finds that there were no objections to the Settlement raised by any
12 person on the record at the hearing on the Final Order.

13
14 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

15
16 Dated: 1/28/2022



Christopher E. Krueger
HON. CHRISTOPHER E. KRUEGER
JUDGE OF THE SUPERIOR COURT