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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF RIVERSIDE
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14 ROXANNE POND, an individual, on behalf
15 of herself and on behalf of all persons
16 similarly situated, and on behalf of the State of
California as a private attorney general,

17 Plaintiffs,

18 v.

19 GLEN IVY HOT SPRINGS, a California
20 Corporation; and DOES 1 through 50,
inclusive,

21 Defendants.
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CASE NO.: CVRI2104986
[Consolidated with CVRI2105059]

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

Hearing Date: October 10, 2023
Hearing Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept.: 1

Action Filed:
Trial Date: Not set

1 The motion of Plaintiff Roxanne Pond (“Plaintiff”) for an order finally approving the Class
2 Action and PAGA Settlement Agreement (“Agreement”) with Defendant Glen Ivy Hot Springs,
3 Inc. (“Defendant”), attorneys’ fees and costs, service payment, and the fees and expenses of the
4 Administrator duly came on for hearing on October 10, 2023 before the Honorable Harold Hopp.

5 **I.**

6 **FINDINGS**

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

- 9 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 10 2. This Court has jurisdiction over the subject matter of this litigation pending before
11 the California Superior Court for the County of Riverside, and over all Parties to this litigation,
12 including the Class.
- 13 3. Based on a review of the papers submitted by Plaintiff and a review of the
14 applicable law, the Court finds that the Gross Settlement Amount of \$1,500,000 and the terms set
15 forth in the Agreement are fair, reasonable, and adequate.
- 16 4. The Court further finds that the Settlement was the result of arm’s length
17 negotiations conducted after Class Counsel had adequately investigated the claims and became
18 familiar with the strengths and weaknesses of those claims. In particular, the amount the
19 Settlement, the significant risks relating to certification, liability, and damages issues, and the
20 assistance of an experienced mediator in the settlement process, among other factors, support the
21 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On May 23, 2023, 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 **Notice to the Class**

- 27 6. In compliance with the Preliminary Approval Order, the Court-approved Class
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1 Notice was mailed by first class mail to members of the Class at their last known addresses on or
2 about June 21, 2023. Mailing of the Class Notice to their last known addresses was the best notice
3 practicable under the circumstances and was reasonably calculated to communicate actual notice
4 of the litigation and the proposed settlement to the Class. The Class Notice fully and accurately
5 informed the Class Members and PAGA Members of all material elements of the proposed
6 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
7 Class; was valid, due, and sufficient notice to all Class Members; and complied fully with the laws
8 of the State of California, the United States Constitution, due process and other applicable law.
9 The Class Notice fairly and adequately described the Settlement and provided adequate
10 instructions and a variety of means to obtain additional information.

11 7. The deadline for opting out of the Class or submitting written objections to the
12 Settlement was August 21, 2023, which for re-mailings was extended by 14 days. There was an
13 adequate interval between notice and the deadline to permit Class Members to choose what to do
14 and act on their decision. A full opportunity has been afforded to the Class Members to
15 participate in this hearing, and all Class Members and other persons wishing to be heard have been
16 heard. Class Members also have had a full and fair opportunity to exclude themselves from the
17 Class. Accordingly, the Court determines that all Class Members who did not timely and properly
18 submit a request for exclusion are bound by the Settlement and this Final Approval Order and
19 Judgment.

20 **Fairness Of Settlement**

21 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
22 48 Cal.App.4th 1794, 1801 (1996).

23 a. The settlement was reached through arm's-length bargaining between the
24 parties during an all-day mediation before Hon. Carl West (Ret.), a respected jurist and
25 experienced mediator of wage and hour class actions. There has been no collusion between the
26 parties in reaching the proposed settlement.

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

3 c. Counsel for both parties are experienced in similar employment class action
4 litigation. All counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. No
6 objections were received. Three (3) requests for exclusion were received.

7 e. The participation rate was high. 1,310 Participating Class Members will be
8 mailed a settlement payment, representing 99.77% of the overall Class.

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

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

16 **Attorneys' Fees and Costs**

17 11. An award of \$500,000 for attorneys' fees, representing one-third (1/3) of the Gross
18 Settlement Amount, and \$17,000 for litigation costs and expenses, is reasonable, in light of the
19 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
20 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
21 and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that Class
25 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
26 the risks and burdens undertaken by the Plaintiff in the litigation, for the time and effort in
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1 bringing and prosecuting this matter on behalf of the Class, and for the execution of a general
2 release.

3 **Administration Expenses Payment**

4 13. The Administrator shall calculate and administer the payments to be made to the
5 Class Members and PAGA Members, transmit payment for attorneys' fees and costs to Class
6 Counsel, transmit the Class Representative Service Payment to the Plaintiff, distribute the LEDA
7 PAGA Payment, issue any required tax reporting forms, calculate withholdings and perform the
8 other remaining duties set forth in the Agreement. The Administrator has documented \$19,400 in
9 fees and expenses, and this amount is reasonable in light of the work performed by the
10 Administrator.

11 **PAGA Penalties**

12 14. The Agreement provides for a PAGA Penalties payment out of the Gross
13 Settlement Amount of \$30,000, which shall be allocated \$22,500 to the LWDA as the LWDA's
14 75% share of the settlement of civil penalties paid pursuant to the PAGA and \$7,500 to be
15 distributed to the Aggrieved Employees based on their respective PAGA Pay Periods worked
16 during the PAGA Period. The Court finds this PAGA Penalties payment to be reasonable. All
17 Aggrieved Employees will be sent their Individual PAGA Payment and will be subject to the
18 release of the Released PAGA Claims as set forth below, whether or not they opt out of the
19 Settlement. The LWDA was provided notice of the Agreement and these settlement terms and has
20 indicated no objection thereto. The Court finds the PAGA Penalties to be reasonable.

21 **II.**

22 **ORDERS**

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

24 1. The certification of the Class for the purposes of settlement is confirmed. The
25 Class is defined as follows:

26 All individuals who are or previously were employed by Defendant in California
27 and classified as a non-exempt employee at any time during the Class Period
(November 1, 2017 through January 1, 2023).

1 2. All persons who meet the foregoing definition are members of the Class, except for
2 those individuals who filed a valid request for exclusion (“opt out”) from the Class. The three
3 individuals who requested exclusion are: Caitlyn Scott, Monica Garcia, and Nicole Rodriguez.

4 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
5 best interest of the Class.

6 4. Class Counsel are awarded attorneys' fees in the amount of \$500,000 and costs in
7 the amount of \$17,000. Class Counsel shall not seek or obtain any other compensation or
8 reimbursement from Defendant, Plaintiff or members of the Class.

9 5. The payment of the Class Representative Service Payment in the amount of
10 \$10,000 to the Plaintiff is approved.

11 6. The payment of \$19,400 to the Administrator for their fees and expenses is
12 approved.

13 7. The PAGA Penalties payment of \$30,000 is approved and shall be allocated in
14 accordance with the Agreement.

15 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
16 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
17 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
18 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
19 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
20 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
21 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
22 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
23 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
24 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
25 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
26 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other

1 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or
2 Released PAGA Claims.

3 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
4 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
5 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
6 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
7 to individual Class Members.

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

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

17 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
18 Plaintiffs, Class Members, and Aggrieved Employees, shall take nothing in the Action.

19 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
20 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
21 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
22 arising from or in connection with the distribution of settlement benefits.

23 3. Each party shall bear its own attorneys' fees and costs, except as otherwise
24 provided in the Agreement and in this Final Approval Order and Judgment.

25 4. As Effective on the date when Defendant fully funds the entire Gross Settlement
26 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
27 Payments, all Participating Class Members, on behalf of themselves and their respective former
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1 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
2 release Released Parties from the Released Class Claims. The “Released Class Claims” are all
3 claims that were alleged, or reasonably could have been alleged, based on facts stated in the
4 Operative Complaint which occurred during the Class Period. Except as expressly set forth in this
5 Agreement, Participating Class Members do not release any other claims, including claims for
6 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
7 unemployment insurance, disability, social security, workers’ compensation, or California class
8 claims based on facts occurring outside the Class Period.

9 5. Effective on the date when Defendant fully funds the entire Gross Settlement
10 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
11 Payments, Plaintiff and the LWDA are deemed to release, on behalf of themselves and their
12 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
13 and assigns, the Released Parties from all of the Released PAGA Claims. The “Released PAGA
14 Claims” are all claims for PAGA penalties that were alleged, or reasonably could have been
15 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which
16 occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA
17 claims, underlying wage and hour claims, claims for wrongful termination, discrimination,
18 unemployment insurance, disability and worker’s compensation, and claims outside of the PAGA
19 Period.

20 6. As used herein, the “Released Parties” are: Defendant and Defendant’s officers,
21 directors, employees and agents.

22 7. Effective on the date when Defendant fully funds the entire Gross Settlement
23 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
24 Payments, Plaintiff and his or her respective former and present spouses, representatives, agents,
25 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
26 Parties from all claims, transactions, or occurrences that occurred during the Class Period as set
27 forth fully in the Agreement (“Plaintiff’s Release”). Further for purposes of Plaintiff’s Release,
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1 Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section
2 1542 of the California Civil Code.

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

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5 Dated: _____

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HON. HAROLD W. HOPP
JUDGE, SUPERIOR COURT OF CALIFORNIA

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FINAL APPROVAL ORDER AND JUDGMENT