

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Sydney S. Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3500
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff TYRA TOLER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TYRA TOLER, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

TOTAL TESTING SOLUTIONS, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive;

Defendants.

Case No. 21STCV38452

~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL

Date: July 19, 2023
Time: 10:00 a.m.

Judge: Hon. Elihu M. Berle
Dept.: 6

FILED
Superior Court of California
County of Los Angeles

07/27/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Fregoso Deputy

1 Plaintiff's motion for an order finally approving the Class Action and PAGA Settlement
2 Agreement ("Agreement") and Motion for Class Counsel Fees, Litigation Expenses Payment and
3 Class Representative Service Payment duly came on for hearing on July 19, 2023, before the
4 above-entitled Court. The JCL Law Firm, APC, and Zakay Law Group, APLC, appeared on
5 behalf of Plaintiff TYRA TOLER ("Plaintiff"). Fisher & Phillips, LLP appeared on behalf of
6 Defendant TOTAL TESTING SOLUTIONS, LLC ("Defendant").

7 **I.**

8 **FINDINGS**

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

11 1. All terms used herein shall have the same meaning as defined in the
12 Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending
14 in the California Superior Court for the County of Los Angeles ("Court"), Case No.
15 21STCV38452, entitled *Toler v. Total Testing Solutions, LLC*, and over all Parties to this
16 litigation, including the Class.

17 **Preliminary Approval of the Settlement**

18 3. On January 3, 2023, the Court granted preliminary approval of a class-wide
19 settlement. At this same time the court approved certification of a provisional settlement class for
20 settlement purposes only. The Court confirms this Order and finally approves the settlement and
21 the certification of the Class.

22 **Notice to the Class**

23 4. In compliance with the Preliminary Approval Order, the Notice Packet was
24 mailed by first class U.S. Mail to the Class Members at their last known addresses on February 1,
25 2023. Mailing of the Notice Packet to their last known addresses was the best notice practicable
26 under the circumstances and was reasonably calculated to communicate actual notice of the
27 litigation and the proposed settlement to the members of the Class Members. The Court finds that
28

1 the Notice Packet provided fully satisfies the requirements of California Rules of Court, rule
2 3.769.

3 5. The Response Deadline for opting out or objecting was March 30, 2023.
4 There was an adequate interval between notice and deadline to permit Class Members to choose
5 what to do and act on their decision. No Class Members objected. No Class Members requested
6 exclusion.

7 **Fairness Of The Settlement**

8 6. The Agreement provides for a Gross Settlement Amount of \$160,000.00.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the parties. There is no evidence of any collusion between the parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to
15 allow the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. No objections were received. No requests for exclusion were
20 received.

21 e. The participation rate is high. All Class Members will be
22 participating in the Settlement and will be sent settlement payments.

23 7. The consideration to be given to the Class Members under the terms of the
24 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
25 claims asserted in this Action and is fair, reasonable, and adequate compensation for the release of
26 the Released Class Claims, given the uncertainties and risks of the litigation and the delays which
27 would ensue from continued prosecution of the Action.

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1 8. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Settlement Class Members.

3 **PAGA Penalties**

4 9. The Agreement provides for a payment of PAGA Penalties in the amount of
5 \$5,000.00. The Court has reviewed the PAGA Penalties and finds and determines that the PAGA
6 Settlement and the allocation of \$3,750.00 to LWDA and \$1,250.00 to the Aggrieved Employees
7 is fair and reasonable and complies with the requirements set forth in *Moniz v. Adecco USA, Inc.*
8 (2021) 72 Cal.App.5th 56.

9 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

10 10. The Agreement provides for a Class Counsel Fees Payment and Class
11 Counsel Litigation Expenses Payment (collectively “Class Counsel Fee and Litigation Expenses
12 Payment”) in the amount of up to Sixty Three Thousand, One Hundred Seventeen Dollars and
13 Sixty Cents (\$63,117.60). Subject to Court approval, the Class Counsel Fee and Litigation
14 Expenses Payment consists of attorneys’ fees equal to one-third (1/3) of the Gross Settlement
15 Amount, Fifty-Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents
16 (\$53,333.33) and reimbursement of costs and expenses in the amount of Nine Thousand, Seven
17 Hundred Eighty Four Dollars and Twenty-Seven Cents (\$9,784.27).

18 11. A Class Counsel Fee and Litigation Expenses Payment of Sixty Three
19 Thousand, One Hundred Seventeen Dollars and Sixty Cents (\$63,117.60) comprised of attorneys’
20 fees in the amount of Fifty-Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-
21 Three Cents (\$53,333.33) and reimbursement of costs and expenses in the amount of Nine
22 Thousand, Seven Hundred Eighty Four Dollars and Twenty-Seven Cents (\$9,784.27) is reasonable
23 in light of the contingent nature of Class Counsel’s fee, the hours worked by Class Counsel, and
24 the results achieved by Class Counsel. The requested attorneys’ fee award represents one-third
25 (1/3) of the common fund, which is reasonable and at the low end of the range for fee awards in
26 common fund cases and is supported by Class Counsel’s lodestar.

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1 **Class Representative Service Payment**

2 12. The Agreement provides for a Class Representative Service Payment of up
3 to \$5,000 for Plaintiff, Tyra Toler, subject to the Court's approval. The Court finds that the
4 amounts of \$5,000 is reasonable in light of the risks and burdens undertaken by the Plaintiff in this
5 class action litigation.

6 **Administrator Expenses Payment**

7 13. The Agreement provides for Administrator Expenses Payment to be paid in
8 an amount not to exceed \$10,000.00. The Declaration of the Settlement Administrator provides
9 that the actual claims administration expenses were \$10,000.00. The amount of this payment is
10 reasonable in light of the work performed by the Settlement Administrator.

11 **II.**

12 **ORDERS**

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

14 1. The Class is certified for the purposes of settlement only. The Settlement
15 Class is hereby defined to include:

16 All individuals who were paid on an hourly basis by Defendant and performed
17 work in California during the Class Period. The Class Period is defined as the
18 period from October 19, 2017, to June 7, 2022.

19 2. There are 314 members of the Class. Every person in the Class who did not
20 opt out is a Settlement Class Member. After providing Notice to the Class, there are zero opt-outs
21 to the Settlement.

22 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
23 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
24 this Order and the terms of the Agreement.

25 4. Defendant shall fund the Gross Settlement Amount on the Funding Date. In
26 exchange the Class Members shall release Defendant from the Released Class Claims and the
27 Aggrieved Employees shall release the Released PAGA Claims.

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1 a. The Released Class Claims are defined as all class claims alleged in
2 the operative complaint which occurred during the Class Period including causes of action for: (1)
3 Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 et seq.; (2) Failure
4 to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 & 1197.1; (3)
5 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (4)
6 Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5)
7 Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802;
8 (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226
9 and 226.2; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202
10 and 203; and (8) Unfair Competition in Violation of California Business and Professions Code §§
11 17200 arising from the violations alleged in (1) through (7), and expressly excluding all other
12 claims, including claims for vested benefits, wrongful termination, unemployment insurance,
13 disability, social security, workers' compensation, and class claims outside of the Class Period.
14 This release includes, but is not limited to a release for California Labor Code sections 201-204,
15 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 1174, 1174.5, 1194, 1197, 1198,
16 2802.

17 b. The Released PAGA Claims are defined as all PAGA claims alleged
18 in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the
19 PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
20 wrongful termination, unemployment insurance, disability, social security, workers'
21 compensation, and PAGA claims outside of the PAGA Period. This release includes, but is not
22 limited to a release for PAGA penalties arising from violations alleged under California Labor
23 Code sections 201-204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 1174,
24 1174.5, 1194, 1197, 1198, 2802. The PAGA Period means the period of August 12, 2020, to June
25 7, 2022.

26 5. Class Counsel are awarded a Class Counsel Fee and Litigation Expenses
27 Payment in the amount of \$63,117.60 comprised of attorneys' fees in the amount of Fifty-Three
28 Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$53,333.33) and

1 reimbursement of costs and expenses in the amount of Nine Thousand, Seven Hundred Eighty
2 Four Dollars and Twenty-Seven Cents (\$9,784.27). Class Counsel shall not seek or obtain any
3 other compensation or reimbursement from Defendant, Plaintiff, or members of the Class.

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

6 7. The payment of \$10,000.00 to the Settlement Administrator for the
7 Administration Expenses Payment is approved.

8 8. The PAGA Penalties of \$5,000 is hereby approved as fair, reasonable,
9 adequate, and adequately protects the interests of the public and the LWDA. Further, the Court
10 finds that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of
11 any fraud or collusion.

12 9. Final Judgment is hereby entered in this action. The Final Judgment shall
13 bind each Settlement Class Member.

14 10. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
15 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General
16 Act ("PAGA").

17 11. The term "Aggrieved Employees" is hereby defined to include all
18 individuals who were paid on an hourly basis by Defendant and performed work in California
19 during the PAGA Period. The PAGA Period means the period of August 12, 2020, to June 7,
20 2022.

21 12. The Court further finds and determines that Class Counsel satisfied
22 California Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of
23 claims arising under the Private Attorney General Act ("PAGA") on November 9, 2022, and again
24 on February 23, 2023.

25 13. The Court orders Class Counsel to comply with California Labor Code §
26 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the
27 Court's entry of this Order.

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

17 15. An Order to Show Cause Re Compliance hearing is set for April 2, 2024, at
18 8:30 a.m. The Parties are ordered to meet and confer and file a joint status report and declaration
19 from the administrator by March 25, 2024, advising the Court of the status of the distribution of
20 settlement funds.

21 16. Notice of entry of this Final Approval Order and Judgment shall be given to
22 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send
23 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
24 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
25 indicated in the Notice Packet.

26 17. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
27 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
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1 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
2 connection with the distribution of settlement benefits.

3 18. If the Settlement does not become final and effective in accordance with the
4 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
5 Defendant consistent with the terms of the Settlement, then this Final Approval Order and
6 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall
7 be vacated.

8 **IT IS SO ORDERED.**

9
10 DATED: 7-27-23



Elihu M. Berle

Hon. Elihu M. Berle
JUDGE OF THE SUPERIOR COURT
Elihu M. Berle / Judge