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10

F I L E D
San Diego Superior Court
Central Division

SEP 17 2024

Clerk of the Superior Court
By: A. Yim, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

13 THERESA BENDORF, JAVIER MARIN, and
14 KRISTY PRATHER, on behalf of themselves
and others similarly situated, and on behalf of
15 other aggrieved employees pursuant to the
California Private Attorneys General Act;

16 Plaintiffs,

17
18 v.

19 SEA WORLD LLC, a Delaware limited liability
company doing business as SEAWORLD SAN
20 DIEGO or AQUATICA SAN DIEGO;
SEAWORLD PARKS & ENTERTAINMENT,
21 INC., a Delaware corporation; and DOES 1
through 25, inclusive,

22 Defendants.
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Lead Case No. 37-2021-00034922-CU-OE-CTL

Other Included Actions:

Case No. 37-2021-00036521-CU-OE-CTL
Case No. 37-2021-00049040-CU-OE-CTL
Case No. 37-2021-00047859-CU-OE-CTL
Case No. 37-2022-00001083-CU-OE-CTL

CLASS AND REPRESENTATIVE ACTION

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

Date: September 13, 2024
Time: 1:30 P.M.
Department: C-69
Judge: Hon. Katherine A. Bacal

Complaint Filed: August 16, 2021
FAC Filed: October 26, 2023
Trial Date: Not Set

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1 Plaintiffs Theresa Bendorf, Kristy Prather, and Javier Marin (collectively, “Plaintiffs”) and
2 Defendants SeaWorld Parks & Entertainment, Inc. and Sea World LLC (together, “Defendants”)
3 (collectively with Plaintiffs, the “Parties” or “Settling Parties”) have entered into the Class Action and
4 PAGA Settlement Agreement (“Settlement Agreement”) to settle the above-captioned class action subject
5 to the Court’s approval (the “Settlement”).

6 This matter is now before the Court on Plaintiffs’ Motion for Final Approval of Class Action and
7 PAGA Settlement. The Court has read, heard, and considered all the pleadings and documents submitted,
8 and the presentations made in connection with the Motion which came on for hearing on September 13,
9 2024.

10 **I. BACKGROUND**

11 On August 16, 2021, Theresa Bendorf filed a complaint under the Private Attorneys General Act,
12 California Labor Code §§ 2698, *et seq.*, against Defendants in the action entitled *Theresa Bendorf v. Sea*
13 *World, LLC, et al.*, San Diego Superior Court Case No. 37-2021-00034922-CU-OE-CTL (“Action”).

14 On August 25, 2021, Theresa Bendorf filed a class action complaint against Defendants in the
15 action entitled *Theresa Bendorf v. Sea World LLC, et al.*, San Diego County Superior Court Case No. 37-
16 2021-00036521-CU-OE-CTL (“*Bendorf* Class Action”).

17 On November 18, 2021, Kristy Prather and two other plaintiffs filed a class action complaint
18 against Defendants entitled *Janeen Jones, et al. v. Seaworld Parks & Entertainment, Inc.*, San Diego
19 County Superior Court Case No. 37-2021-00049040-CU-OE-CTL (“*Jones* Action”).

20 On November 10, 2021, Javier Marin filed a class action complaint against Defendant Sea World
21 LLC entitled *Javier Marin v. Sea World LLC*, San Diego County Superior Court Case No. 37-2021-
22 00047859-CU-OE-CTL (“*Marin* Class Action”).

23 On January 10, 2022, Javier Marin filed a separate PAGA complaint entitled *Javier Marin v. Sea*
24 *World LLC, et al.*, San Diego County Superior Court Case No. 37-2022-00001083-CU-OE-CTL (“*Marin*
25 PAGA Action”).

26 On October 26, 2023, Plaintiffs filed a First Amended Class and Representative Action Complaint
27 (“Operative Complaint”) in the Action, which consolidated the *Bendorf* Class Action, *Jones* Action, *Marin*
28 Class Action, and *Marin* PAGA Action, and stated additional facts, theories, and allegations giving rise

1 to the Plaintiffs’ claims. The Operative Complaint alleges causes of action against Defendants for (1)
2 violation of San Diego Municipal Code §§ 311.010, *et seq.*; (2) wrongful failure to hire in violation of
3 public policy (failure to recall); (3) wrongful failure to hire in violation of public policy (age
4 discrimination); (4) constructive discharge in violation of public policy; (5) wrongful termination in
5 violation of public policy; (6) failure to pay vested vacation wages (Labor Code § 227.3); (7) breach of
6 contract; (8) breach of the implied covenant of good faith and fair dealing; (9) failure to pay minimum
7 wages; (10) failure to pay overtime wages; (11) failure to provide lawful meal periods; (12) failure to
8 authorize and permit rest periods; (13) failure to timely pay wages during employment (Labor Code §
9 204); (14) failure to timely pay wages upon termination (Labor Code §§ 201, 202, 203); (15) failure to
10 provide accurate itemized wage statements (Labor Code § 226(a)); (16) violation of unfair competition
11 laws (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (17) civil penalties under the Private Attorneys’
12 General Act, Labor Code §§ 2698, *et seq.*

13 **A. Class Members**

14 The “Class” or “Class Members” are comprised of:

15 a. “Wage and Hour Class” or “Wage and Hour Class Members”: all
16 current and former non-exempt employees of Defendants in California
17 during the Wage and Hour Class Covered Period (or if any such person is
18 incompetent, deceased, or unavailable due to military service, the person’s
19 legal representative or successor in interest evidenced by reasonable
20 verification). The Wage and Hour Class shall not include any person who
21 submits a valid and timely Request for Exclusion.

22 b. “Failure to Recall Class” or “Failure to Recall Class Members”: all
23 current and former employees of Defendants in California during the
24 Failure to Recall Class Covered Period who were temporarily or
25 permanently furloughed in connection with the COVID-19 pandemic and
26 who Defendants subsequently failed to recall or reinstate to their prior
27 employment status (or if any such person is incompetent, deceased, or
28 unavailable due to military service, the person’s legal representative or
successor in interest evidenced by reasonable verification), except those
individuals who previously entered into release agreements with
Defendants. The Failure to Recall Class shall not include any person who
submits a valid and timely Request for Exclusion.

29 **B. Operation of the Settlement**

Pursuant to the Preliminary Approval Order, this Court conditionally certified the Class and

1 granted preliminary approval of the Settlement. The Preliminary Approval Order also approved of the
2 proposed form of class notice and notice plan. The Court entered the Preliminary Approval Order after
3 review and consideration of the pleadings filed in connection herewith, and the oral presentations made
4 by counsel at the hearing.

5 In compliance with the Preliminary Approval Order, the Notice of Class Action Settlement and
6 Hearing Date for Final Court Approval (“Class Notice”) was sent to all Class Members via U.S. first class
7 mail. The notice dissemination process was timely completed.

8 This Court finds that the Settlement appears to be the product of serious, informed, non-collusive
9 negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to any
10 individuals. The Court finds that the Settlement was entered into in good faith pursuant to California Code
11 of Civil Procedure § 877.6. The Court further finds that the Settlement is fair, reasonable, and adequate
12 and that Plaintiffs have satisfied the standards for final approval of a class action settlement under
13 California law. Under the provisions of California Code of Civil Procedure § 382 and Federal Rule of
14 Civil Procedure 23, as approved for use by the California state court in *Vasquez v. Superior Court* (1971)
15 4 Cal. 3d 800, 821, the trial court has discretion to certify a class where:

16 [Q]uestions of law or fact common to the members of the class predominate
17 over any questions affecting only individual members, and that a class
18 action is superior to the available methods for the fair and efficient
adjudication of the controversy.... Fed. R. Civ. Proc. 23.

19 Certification of a settlement class is the appropriate judicial device under these circumstances.

20 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
21 FOLLOWS:

22 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement
23 Agreement filed in this case.

24 2. The Court has jurisdiction over the subject matter of the litigation, the Class
25 Representatives, the Participating Class Members and Aggrieved Employees, and Defendants.

26 3. The Court finds that the dissemination of the Class Notice disseminated to the Class
27 Members, constituted the best notice practicable under the circumstances to all individuals within the
28 definition of the Class, and fully met the requirements of California law and due process under the United

1 States Constitution. No objections were received by the Parties or the Court through the date of this Order.

2 4. The Court approves the settlement of the above-captioned action, as set forth in the
3 Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties
4 are directed to perform in accordance with the terms set forth in the Settlement Agreement.

5 5. Except as otherwise provided in the Settlement Agreement and in this Order, the Settling
6 Parties are to bear their own costs and attorneys' fees.

7 6. The Court hereby certifies the following Class for settlement purposes only:

8 a. "Wage and Hour Class" or "Wage and Hour Class Members": all
9 current and former non-exempt employees of Defendants in California
10 during the Wage and Hour Class Covered Period (or if any such person is
11 incompetent, deceased, or unavailable due to military service, the person's
12 legal representative or successor in interest evidenced by reasonable
13 verification). The Wage and Hour Class shall not include any person who
14 submits a valid and timely Request for Exclusion.

15 b. "Failure to Recall Class" or "Failure to Recall Class Members": all
16 current and former employees of Defendants in California during the
17 Failure to Recall Class Covered Period who were temporarily or
18 permanently furloughed in connection with the COVID-19 pandemic and
19 who Defendants subsequently failed to recall or reinstate to their prior
20 employment status (or if any such person is incompetent, deceased, or
21 unavailable due to military service, the person's legal representative or
22 successor in interest evidenced by reasonable verification), except those
23 individuals who previously entered into release agreements with
24 Defendants. The Failure to Recall Class shall not include any person who
25 submits a valid and timely Request for Exclusion.

26 7. With respect to the Class and for purposes of approving the Settlement only and for no
27 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so
28 numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to
the Class, and there is a well-defined community of interest among Members of the Class with respect to
the subject matter of the claims in the Litigation; (c) the claims of Class Representatives are typical of the
claims of the members of the Class; (d) the Class Representatives have fairly and adequately protected the
interests of the members of the Class; (e) a class action is superior to other available methods for an
efficient adjudication of this controversy; and (f) the counsel of record for the Class Representatives, *i.e.*,
Class Counsel, are qualified to serve as counsel for the Plaintiffs in their individual and representative

1 capacities and for the Class.

2 8. Defendants shall fund the \$3,500,000.00 Gross Settlement Amount, plus the employer
3 payroll taxes pursuant to the terms of the Settlement Agreement.

4 9. The Court approves the Individual Class Payment and Individual PAGA Payment amounts,
5 which shall be distributed pursuant to the terms of the Settlement Agreement.

6 10. The \$3,500,000.00 Gross Settlement Amount shall be used to pay (a) Class Counsel
7 attorneys' fees in the amount of \$1,166,666.67 and reimbursement of costs in the amount of \$22,069.59;
8 (b) a service payment to Class Representative Theresa Bendorf to reimburse her for her unique services
9 in the following amount: \$7,500.00; (c) a service payment to Class Representative Kristy Prather to
10 reimburse her for her unique services in the following amount: \$5,000.00; (d) a service payment to Class
11 Representative Javier Marin to reimburse him for him unique services in the following amount:
12 \$10,000.00; (e) the sum of \$75,000.00 to be paid to the California Labor & Workforce Development
13 Agency ("LWDA") for PAGA Penalties; and (f) \$50,000.00 to the administrator CPT Group, Inc. (the
14 "Settlement Administrator") for its fees and costs relating to the settlement administration process. The
15 Court finds that these amounts are fair and reasonable. Defendants are directed to make such payments in
16 accordance with the terms of the Settlement Agreement. The allocation and distribution of these amounts
17 shall be performed by the Settlement Administrator.

18 11. Funds from Participating Class Members' and Aggrieved Employees' uncashed checks
19 (upon the expiration date) shall be transmitted to the California State Controller's Unclaimed Property
20 Fund in the name of the Participating Class Member and/or Aggrieved Employee to whom the funds
21 relate.

22 12. The Court sets a Compliance Hearing for _____, 2025. At least five (5) court days
23 prior to the compliance hearing, the Settlement Administrator will provide declaration to the Court that
24 shall describes (i) the date the checks were mailed, (ii) the total number of checks mailed to class members,
25 (iii) the number of checks that remain uncashed, and (iv) the total value of those uncashed checks.

26 13. The Settlement Agreement is not an admission of liability or wrongdoing by Defendants,
27 nor is this Order a finding of the validity of any claims in the Action or of any fault, omission, or
28 wrongdoing by Defendants.

1 14. The Court hereby enters final judgment in this case in accordance with the terms of the
2 Settlement Agreement, Preliminary Approval Order, and this Order. Without affecting the finality of the
3 Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the
4 action and the Parties, including all Participating Class Members, for purposes of enforcing and
5 interpreting this Order and the Settlement.

6 IT IS SO ORDERED AND ADJUDGED.

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8 DATED: _____

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9/17/24



HON. KATHERINE A. BACAL
SUPERIOR COURT OF CALIFORNIA