

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiffs,

v.

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

Defendants.

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

**[AMENDED PROPOSED] ORDER
PRELIMINARILY APPROVING CLASS
ACTION AND PAGA SETTLEMENT AND
SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

Reservation No.: 3112518
Date: May 31, 2024
Time: 9:00 a.m.
Department: C-69
Judge: Hon. Katherine Bacal

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

1 The Court, having read and considered the papers filed in support of Plaintiffs’ Motion for
2 Preliminary Approval of Class Action and PAGA Settlement, the proposed Court Approved Notice of
3 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), and other
4 documents, having considered the arguments of counsel, and good cause appearing therefore, **IT IS**
5 **HEREBY ORDERED:**

6 1. The Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement
7 Agreement”) entered into by and between Plaintiffs Theresa Bendorf, Kristy Prather, and Javier Marin
8 (together, “Plaintiffs”) and Defendants SeaWorld Parks & Entertainment, Inc. and Sea World LLC
9 (together, “Defendants”) (collectively, with Plaintiffs, the “Parties”) is preliminarily approved as the terms
10 of the Settlement Agreement fall within the range of approval as fair, adequate and reasonable. Based on
11 a review of the papers submitted by Plaintiffs, the Court finds that the Settlement is the result of arm’s-
12 length negotiations conducted after Plaintiffs and their counsel adequately investigated the claims and
13 become familiar with the strengths and weaknesses of the claims. The assistance of an experienced
14 mediator in the Settlement process supports the Court’s conclusion that the Settlement is non-collusive
15 and reasonable. The Settlement is presumptively valid, subject only to any objections that may be raised
16 to the Settlement and at the Final Fairness Hearing.

17 2. This Order incorporates by reference all defined terms set forth in the Settlement
18 Agreement, which is attached as Exhibit 1 to the Declaration of James R. Hawkins in Support of Plaintiffs’
19 Motion for Preliminary Approval of Class Action and PAGA Settlement filed on April 9, 2024 except for
20 the definition of “Released Failure to Recall Class Claims” which shall be modified as follows:

21 5.5. Released Failure to Recall Class Claims: All causes of action and factual or legal
22 theories that were alleged in the Operative Complaint in the Action or reasonably could
23 have been alleged based on the facts and legal theories contained in the Operative
24 Complaint, including all of the following claims for relief in connection with any Covid-
25 19-related furlough, lay-off, termination, or separation from employment: (a) breach of
26 written contract; (b) breach of the implied covenant of good faith and fair dealing; (c)
27 violation of section 311.0101 et seq. of the San Diego Municipal Code; (d) wrongful
28 termination in violation of public policy; (e) wrongful failure to hire in violation of public
policy; (f) constructive discharge in violation of public policy; (g) unfair competition and
business practices (in violation of Cal. Bus. & Prof. Code Sec. 17200, et seq.) that are
and/or could have been premised on the claims, causes of action, or legal theories of relief
described above or any of the claims, causes of action, or legal theories of relief pleaded
in the Operative Complaint in the Action; and (h) similar claims under other state laws

1 that were alleged in the Operative Complaint in the Action or reasonably could have been
2 alleged based on the facts and legal theories contained in the Operative Complaint,
3 including all damages, punitive damages, penalties, interest, and other amounts
4 recoverable under said claims, causes of action, or legal theories of relief (collectively,
5 the “Released Failure to Recall Class Claims”). The period of the release shall extend to
6 the limits of the Failure to Recall Class Covered Period. The res judicata effect of the
7 Judgment will be the same as that of the release.

8 3. The following persons are provisionally certified as the “Class” or “Class Members” for
9 Settlement purposes only:

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

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

25 4. The proposed Class satisfies the requirements for certification under California Code of
26 Civil Procedure section 382 because Class Members are readily ascertainable, and a well-defined
27 community of interest exists in the questions of law and fact affecting the Parties.

28 5. Plaintiffs are appointed as the Class Representatives. Blackstone Law, APC, Farnaes &
Lucio, APC, James Hawkins APLC, Diversity Law Group, P.C., Polaris Law Group, and Law Offices of
Choi & Associates are appointed as Class Counsel.

6. Class Counsel’s fee splitting agreement is set forth in Section 3.2.2 of the Settlement
Agreement and signed by Plaintiffs in accordance with Rules Prof. Conduct, rule 1.5.1 and Cal. Rules of
Court, rule 3.769.

7. The Parties’ proposed notice plan is constitutionally sound and hereby approved as the best
notice practicable. The proposed Class Notice, attached as Exhibit A to the Settlement Agreement, is

1 sufficient to inform Class Members of the terms of the Settlement Agreement, their rights to receive
2 monetary payments under the Settlement Agreement and the date and location of the final approval
3 hearing. In addition, the Class Notice fairly, plainly, accurately, and reasonably informs Class Members
4 of: (1) the nature of the action, the definition of the Class, the identity of Class Counsel, and essential
5 terms of the Settlement; (2) Plaintiffs' and Class Counsel's applications for the Class Representative
6 Service Payments, and Class Counsel's request for attorneys' fees and litigation costs; (3) a formula used
7 to determine the Class Members' estimated payments; (4) Class Members' rights to appear at the final
8 approval hearing through counsel if they desire; (5) how to object to the Settlement or submit a Request
9 for Exclusion from the Settlement if a Class Member wishes to do so; and (6) how to obtain additional
10 information regarding the action and the Settlement. (California Rule of Court 3.766.) The Court finds
11 that the notice requirements of California Rule of Court 3.769, subd. (f) are satisfied, and that the Class
12 Notice adequately advises Class Members of their rights under the Settlement. Counsel for the Parties are
13 authorized to correct any typographical errors in the Class Notice and make clarifications, to the extent
14 the same are found or needed, so long as such corrections do not materially alter the substance of the Class
15 Notice and other notice documents.

16 8. The Court also finds that notice of the Settlement was provided to the California Labor and
17 Workforce Development Agency ("LWDA") pursuant to Labor Code § 2699(1)(2).

18 9. CPT Group, Inc. is appointed to act as the Administrator, pursuant to the terms set forth in
19 the Settlement Agreement. The Administrator is ordered to carry out the Settlement according to the terms
20 of the Settlement Agreement and in conformity with this Order, including disseminating the Class Notice
21 according to the notice plan described in the Settlement Agreement.

22 10. The procedures and 45-day deadline for Class Members to request exclusion from or object
23 to the Settlement are adopted as described in the Settlement Agreement. Any Participating Class Member
24 who intends to object to the Settlement must submit an objection to the Settlement Administrator by fax,
25 email, or mail in accordance with the Settlement Agreement. Any opposition or reply to an objection or
26 the motion for final approval will be due according to Code of Civil Procedure section 1005.


27 11. The Parties are ordered to carry out the Settlement according to the terms of the Settlement
28 Agreement.

1 12. A final approval hearing will be held on September 13, 2024, at 1:30 p.m., to determine
2 whether the Settlement Agreement should be granted final approval as fair, reasonable, and adequate as
3 to the Participating Class Members. The Court reserves the right to continue the date of the final approval
4 hearing without further notice to the Class Members. The Court retains jurisdiction to consider all further
5 applications arising out of or in connection with the Settlement Agreement.

6 13. The Motion for Final Approval of the Settlement Agreement, including requests to approve
7 the Class Representative Service Payments and Class Counsel’s request for attorneys’ fees and costs, shall
8 be filed and served no later than 16 court days before the final approval hearing.

9 14. In the event the Settlement is not fully and finally approved, or otherwise does not become
10 effective in accordance with the terms of the Settlement Agreement, this Order shall be rendered null and
11 void and shall be vacated, and the Parties shall revert to their respective positions as of before entering
12 into the Settlement Agreement. If the Settlement does not become final for any reason, the fact that the
13 Parties were willing to stipulate to settlement and the circumstances, proceedings and documents related
14 to the proposed settlement and shall have no bearing on, and will not be admissible in connection with
15 litigation, whether through issue preclusion or estoppel or otherwise.

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17 Dated: 06/11/2024

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20 HON. KATHERINE BACAL
21 Judge, San Diego County Superior Court
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1 **PROOF OF SERVICE, COUNTY OF ORANGE**

2 I am a resident of the State of California, County of Orange. I am over the age of eighteen
3 years and not a party to the within action. My business address is 9880 Research Drive., Suite
200, Irvine, California 92618.

4 On June 7, 2024, I served on the interested parties in this action the following document(s)
5 entitled:


6
7 **-[AMENDED PROPOSED] ORDER PRELIMINARY APPROVING CLASS ACTION
8 AND PAGA SETTLEMENT AND HEARING FOR FINAL APPROVAL OF
9 SETTLEMENT**

10
11 **[XX] BY ELECTRONIC SERVICE:** Based on a court Order or an agreement by the parties to
12 accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the
13 email address irma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the
14 Service List below. I did not receive, within a reasonable time after the transmission, any
15 electronic message or other indication that the transmission was unsuccessful.

16 **SERVICE LIST**

17 **[X] STATE:** I declare under penalty of perjury, under the laws of the State of California, that the
18 above is true and correct.

19 Executed on June 7, 2024, at Irvine, California.

20 
21 _____
22 Irma Ceja

1 **SERVICE LIST**

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