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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 11/18/2024
By Deputy: Nazarian, Agnes

8 Attorneys for Plaintiff Sherry Simmons

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MONTEREY

11 SHERRY SIMMONS, individually, and on
12 behalf of other members of the general public
similarly situated,

13 Plaintiff,

14 vs.

15 GARY & BECKY VICK, INC., a California
16 corporation; and DOES 1 through 10, inclusive,

17 Defendants.

Case No. 23CV000951

Assigned to the Hon. Carrie M. Panetta

**~~PROPOSED~~ ORDER AND JUDGMENT
GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND A CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT**

Date: November 15, 2024

Time: 8:30 a.m.

Place: Department 14

Complaint Filed: March 29, 2023

Trial Date: None Set

1 **ORDER AND JUDGMENT**

2 This matter came before the Court for a hearing on the Motion for Final Approval of the Class
3 Action Settlement and Motion for Attorneys’ Fees, Costs, and a Class Representative Enhancement
4 Payment (collectively, the “Motions”). Due and adequate notice having been given to Class Members as
5 required by the Court’s Preliminary Approval Order, and the Court having reviewed the Motions, and
6 determining that the settlement is fair, adequate and reasonable, and otherwise being fully informed and
7 **GOOD CAUSE** appearing therefore, it is hereby **ORDERED AS FOLLOWS**:

8 1. For the reasons set forth in the Preliminary Approval Order, which are adopted and
9 incorporated herein by reference, this Court finds that the requirements of California Code of Civil
10 Procedure section 382 and rule 3.769 of the California Rules of Court have been satisfied.

11 2. This Order hereby adopts and incorporates by reference the terms and conditions of the
12 Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “Settlement”),
13 together with the definitions and terms used and contained therein.

14 3. The Court finds that it has jurisdiction over the subject matter of the action and over all
15 parties to the action, including all members of the Settlement Class.

16 4. The Class Notice fully and accurately informed Class Members of all material elements
17 of the proposed settlement and of their opportunity to opt out or object; was the best notice practicable
18 under the circumstances; was valid, due, and sufficient notice to all Class Members; and complied fully
19 with the laws of the State of California and due process. The Class Notice fairly and adequately
20 described the settlement and provided Class Members with adequate instructions and a variety of means
21 to obtain additional information.

22 5. Class Members were given a full opportunity to participate in the Final Approval
23 hearing, and all Class Members and other persons wishing to be heard have been heard. Accordingly, the
24 Court determines that all Class Members who did not timely and properly opt out of the settlement are
25 bound by this Order.

26 6. The Court has considered all relevant factors for determining the fairness of the
27 settlement and has concluded that all such factors weigh in favor of granting final approval. In particular,
28 the Court finds that the settlement was reached following meaningful discovery and investigation

1 conducted by Plaintiff's Counsel; that the settlement is the result of serious, informed, adversarial, and
2 arm's-length negotiations between the Parties; and that the terms of the settlement are in all respects fair,
3 adequate, and reasonable.

4 7. In so finding, the Court has considered all evidence presented, including evidence
5 regarding the strength of Plaintiff's case; the risk, expense, and complexity of the claims presented; the
6 likely duration of further litigation; the amount offered in settlement; the extent of investigation and
7 discovery completed; and the experience and views of counsel. The Parties have provided the Court with
8 sufficient information about the nature and magnitude of the claims being settled, as well as the
9 impediments to recovery, to make an independent assessment of the reasonableness of the terms to
10 which the Parties have agreed.

11 8. Accordingly, the Court hereby approves the settlement as set forth in the Settlement
12 Agreement and expressly finds that the settlement is, in all respects, fair, reasonable, adequate, and in the
13 best interests of the entire Settlement Class and hereby directs implementation of all remaining terms,
14 conditions, and provisions of the Settlement Agreement. The Court also finds that settlement now will
15 avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were
16 to continue to litigate the case. Additionally, after considering the monetary recovery provided by the
17 settlement in light of the challenges posed by continued litigation, the Court concludes that the settlement
18 provides Class Members with fair and adequate relief.

19 9. The Settlement Agreement is not an admission by Defendant or by any other Released
20 Party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant or
21 any other Released Party. Neither this Order, the Settlement Agreement, nor any document referred to
22 herein, nor any action taken to carry out the Settlement Agreement, may be construed as, or may be used
23 as, an admission of any fault, wrongdoing, omission, concession, waiver of defenses, or liability
24 whatsoever by or against Defendant or any of the other Released Parties.

25 10. Because no Class Members opted out, final approval shall be with respect to: All
26 persons who worked for Defendant as non-exempt, hourly paid employees in the State of California at
27 any time from March 29, 2019 through April 18, 2022.

28 11. Plaintiff Sherry Simmons is an adequate and suitable representative and is hereby

1 appointed the Class Representative for the Settlement Class. The Court finds that Plaintiff's investment
2 and commitment to the litigation and its outcome ensured adequate and zealous advocacy for the
3 Settlement Class, and that her interests are aligned with those of the Settlement Class.

4 12. The Court hereby awards Plaintiff a Class Representative Enhancement Payment of
5 ~~\$10,000~~ ^{7500.00} for her service on behalf of the Settlement Class, and for agreeing to a general release of all
6 claims arising out of her employment with Defendant.

7 13. The Court finds that the attorneys at Capstone Law APC have the requisite
8 qualifications, experience, and skill to protect and advance the interests of the Settlement Class. The
9 Court therefore finds that counsel satisfy the professional and ethical obligations attendant to the position
10 of Class Counsel, and hereby appoints Capstone Law APC as counsel for the Settlement Class.

11 14. The Court hereby awards \$128,333 in attorneys' fees and ~~\$14,669.03~~ ^{14,394.00} in costs and
12 expenses to Capstone Law APC. The Court finds that the requested award of attorneys' fees is
13 reasonable for a contingency fee in a class action such as this; i.e., one-third of the common fund created
14 by the settlement. Counsel have also established the reasonableness of the requested award of attorneys'
15 fees via their lodestar crosscheck, and the Court finds that the attorney staffing, hours billed, and hourly
16 rates are reasonable, and the multiplier is warranted under the circumstances.

17 15. The Court approves settlement administration costs and expenses in the amount of
18 \$12,000 to CPT Group, Inc.

19 16. All Class Members were given a full and fair opportunity to participate in the Approval
20 Hearing, and all members of the Settlement Class wishing to be heard have been heard. Members of the
21 Settlement Class also have had a full and fair opportunity to exclude themselves from the proposed
22 settlement and the class. Accordingly, the terms of the Settlement Agreement and of the Court's Order
23 and Judgment shall be forever binding on all Participating Class Members. These Participating Class
24 Members have released and forever discharged the Released Parties for any and all Released Class
25 Claims during the Class Period:

26 All claims, rights, demands, liabilities, and causes of action, reasonably arising
27 from, or reasonably related to, the same set of operative facts as those set forth in
28 the operative Complaint during the Class Period, including claims for violation of:
(1) Labor Code sections 226.7, 512(a), 516, and 1198 (failure to provide meal
periods); (2) Labor Code sections 226.7, 516, and 1198 (failure to authorize and

1 permit rest periods); (3) Labor Code sections 510 and 1198 (unpaid overtime); (4)
2 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 (unpaid minimum
3 wages); (5) Labor Code sections 201, 202, and 203 (wages not timely paid upon
4 termination); (6) Section 204 and 210 (failure to timely pay wages during
5 employment); (7) Section 2802 (unreimbursed business expenses); (8) California
6 Business & Professions Code sections 17200, *et seq.* (unlawful business practices)
7 based on the preceding; and (9) California Business & Professions Code sections
8 17200, *et seq.* (unfair business practices) based on the preceding.

9 17. Judgment in this matter is entered in accordance with the above findings.

10 18. Without affecting the finality of the Judgment, the Court shall retain exclusive and
11 continuing jurisdiction over the above-captioned action and the parties under Cal. Civ. Proc. Code §
12 664.6, including all Participating Settlement Members, for purposes of enforcing the terms of the
13 Judgment entered herein.

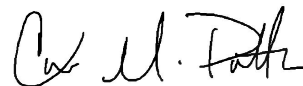
14 19. This document shall constitute a judgment (and separate document constituting said
15 judgment) for purposes of California Rules of Court, Rule 3.769(h).

16 20. Plaintiff shall give notice of this Order and Judgment to Class Members, pursuant to rule
17 3.771 of the California Rules of Court, by posting an electronic copy of this Order and Judgment on the
18 Settlement Administrator's website.

19 21. Plaintiff shall file a declaration from the Settlement Administrator regarding the
20 completion of settlement administration activities no later than August 15, 2025, as well as an amended
21 judgment regarding the distribution of unclaimed residuals to Food Bank for Monterey County. The
22 Court sets a compliance hearing for May 6, 2025 at 10:00 a.m., at which time the
23 Court will consider evidence that the distribution process is complete and that a final accounting may be
24 approved.

25 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

26 Dated: 11/16/2024



27 Hon. Carrie M. Panetta
28 Monterey County Superior Court Judge

1 **PROOF OF SERVICE**

2 I am employed in the State of California, County of Los Angeles. I am over the age of 18
3 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los
4 Angeles, California 90067.

5 On **October 18, 2024**, I served the document described as: **[PROPOSED] ORDER AND
6 JUDGMENT GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION
7 SETTLEMENT AND MOTION FOR ATTORNEYS’ FEES, COSTS, AND A CLASS
8 REPRESENTATIVE ENHANCEMENT PAYMENT** on the interested parties in this action by
9 sending the original [or] a true copy thereof to interested parties as follows [or]
10] as stated on the attached service list:

11 Ana C. Toledo
12 atoledo@nheh.com
13 NOLAND, HAMERLY, ETIENNE & HOSS
14 A Professional Corporation
15 333 Salinas Street
16 P.O. Box 2510
17 Salinas, CA 93902

Attorneys for Defendant:
GARY & BECKY VICK, INC.

18 **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
19 for mailing in the ordinary course of business at Los Angeles, California. I am “readily
20 familiar” with this firm’s practice of collection and processing correspondence for
21 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
22 Service that same day in the ordinary course of business with postage thereon fully
23 prepaid at Los Angeles, California.

24 **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
25 California, by e-mail delivery on the parties listed herein at their most recent known e-
26 mail address or e-mail of record in this action.

27 **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope,
28 by hand to the counsel for Defendant.

BY ELECTRONIC SERVICE: I caused the document(s) to be transmitted
electronically via One Legal eService to the individuals listed above, as they exist on
that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on **October 18, 2024**, at Los Angeles, California.

Stacy Winberg
Type/Print Name

/s/ Stacy Winberg
Signature