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FILED
Superior Court of California
County of Los Angeles

04/07/2023

David W. Slayton, Executive Officer / Clerk of Court

By: A. Rosas Deputy

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

11
12 KENNETH TOSTE, on behalf of himself and
all others similarly situated and aggrieved,

13 Plaintiffs,

14 v.

15 PATH VENTURES, a California corporation,
16 doing business as “People Assisting The
Homeless”; and DOES 1 through 100,
17 inclusive,

18 Defendants.

CASE NO.: 19STCV45845

(Related to Case No. 20STCV02972)

[Assigned to the Hon. Stuart M. Rice in Dept.
SS-1]

**~~PROPOSED~~ FINAL APPROVAL
ORDER AND JUDGMENT OF
CLASS ACTION SETTLEMENT**

Date: April 4, 2023

Time: 10:30 a.m.

Dept.: SS-1

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1 This matter is before the Court on the motion for final approval of a class action
2 settlement (“Settlement”) between individual and representative Plaintiffs Kenneth Toste,
3 Cesillia Mixco and Joia Williams (“Plaintiffs”) and Defendant PATH Ventures (“Defendant”)
4 (collectively the “Parties”), as set forth in the Settlement Agreement, and a good faith
5 determination pursuant to California Code of Civil Procedure section 877.6.

6 By the Order Granting Plaintiffs’ Motion for Preliminary Approval of Class Action
7 Settlement, Approving Form and Manner of Notice, and Scheduling Final Approval Hearing
8 (“Preliminary Approval Order”), the Court: 1) granted preliminary approval of the Settlement; 2)
9 ordered that notice of the Settlement be disseminated to Class Members, as directed therein; and 3)
10 scheduled a final approval and fairness hearing (“Fairness Hearing”) for April 4, 2023.

11 On April 4, 2023, the Parties appeared before the Court for the Fairness Hearing, and
12 an opportunity to be heard was given to all persons requesting to be heard. The Court has
13 reviewed and considered all the pleadings filed in connection with the instant matter and all
14 of the arguments and evidence presented concerning the Settlement.

15 The entire matter of the proposed Settlement having been duly noticed, and having
16 been fully considered by the Court, **IT IS HEREBY ADJUDGED, ORDERED, AND**
17 **DECREED:**

18 **A. Plaintiffs’ Motion for Final Approval of the Class Action Settlement is Granted**

19 1. This Court has jurisdiction over the above-captioned action, Plaintiffs, Class
20 Members, Defendant, and any party to any agreement that is part of or related to the Settlement
21 Agreement.

22 2. Capitalized terms used in this Order have the meanings and/or definitions
23 ascribed to them in the Settlement Agreement.

24 3. The Court finds that the applicable requirements of the California Code of Civil
25 Procedure section 382 and California Rules of Court, rules 3.769 and 3.7709 have been
26 satisfied with respect to Class members and the Settlement.

27 4. The certified Class is defined as follows in the Court's October 7, 2022, Order
28 Granting Certification of the Settlement Class: “all current and former non-exempt, hourly

1 paid employees who worked in California for Defendants at any time during the Class Period.”

2 The Class Period is defined as “December 23, 2015 through September 21, 2021.”

3 5. The Court finds and determines that, for settlement purposes, the Class Period
4 encompasses the period between December 23, 2015 through September 21, 2021, as specified
5 in the Court-approved Notice of Class Action Settlement and agreed upon by the Parties.

6 6. The notice mechanisms implemented pursuant to the Settlement Agreement and
7 as approved by the Court in the Preliminary Approval Order, were reasonably calculated under
8 the circumstances to apprise Class Members of the pendency of the Action and all material
9 elements of the proposed Settlement, as well as their opportunity to object to or comment on
10 the Settlement and to appear at the Fairness Hearing. The notice was reasonable: it provided
11 due, adequate, and sufficient notice to all Class Members and complied fully with the laws of
12 the State of California, the Code of Civil Procedure, the California Rules of Court, due process,
13 and any other applicable statutes or rules. A full and fair opportunity has been afforded to the
14 members of the Class to participate in the Fairness Hearing, and all Class Members and other
15 persons wishing to be heard have been heard. There were no objections or exclusions.

16 7. Accordingly, the Court determines that all members of the Class are bound by
17 this Judgment, Final Order, and Decree.

18 8. No Class Members asserted Objections to the Settlement.

19 9. Only one Class Member opted out: Paula Cocks. Ms. Cocks shall be excluded
20 from the preclusive effects of this Order and the Judgment.

21 10. The Court hereby grants final approval to the Settlement and finds that it is fair,
22 reasonable, and adequate, and in the best interests of the Class.

23 11. The Settlement is entitled to a presumption of reasonableness, as it was
24 negotiated at arms’ length by experienced and well-prepared Class Counsel. *7-Eleven Owners*
25 *for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2001).

26 12. Even apart from this presumption, the Court has determined that the Settlement
27 is fair, reasonable, and adequate as measured by the relevant criteria. *See Dunk v. Ford Motor*
28 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (listing and applying factors). Prior to entering into

1 the proposed Settlement, Class Counsel, who have extensive experience in class action and
2 wage and hour litigation, were well-informed about the potential risks and rewards of
3 continued litigation, having conducted reasonable discovery and investigation and assessed
4 Defendant's potential liability and Class Members' damages, including at private mediation
5 with an experienced and well-respected mediator.

6 13. The case is not yet set for trial, and continued litigation, including any necessary
7 post-trial appeal, presents significant risks for Class Members.

8 14. The Court finds that Six Hundred Sixty-Nine Thousand and Ninety-One Dollars
9 and Sixty-Five Cents (\$669,091.65) in cash is fair, reasonable, and adequate given the claims
10 and defenses, the class size, and the substantial litigations risks.

11 15. In addition, the reaction of Class Members strongly favors approval of the
12 Settlement. The Class consists of 1,557 current and former non-exempt employees who
13 worked for Defendant in California during the Class Period. Zero Class Members objected to
14 the Settlement.

15 16. The Court approves reasonable attorneys' fees in the amount of \$223,030.55 to
16 Class Counsel and Costs in the amount of \$21,475.14.

17 17. The Court approves administration expenses awarded to the administrator in the
18 amount of \$13,950.

19 18. The Court grants Plaintiffs' request for a \$7,500 each as incentive awards.

20 19. The plan for administration of the Settlement, as approved in the Preliminary
21 Approval Order and described in the Class Notice disseminated to all Class Members, is
22 hereby approved as fair, reasonable, and adequate. Pursuant to the Settlement and Class
23 Notice, funds are to be disbursed from the Settlement Fund as follows:

24 **i. Terms**

25 20. Based on the foregoing findings, the Settlement Agreement is finally approved
26 and made a part of this Judgment as if fully set forth herein and shall have the full force and
27 effect of an order of this Court. The Parties shall communicate the Settlement Agreement
28 according to its terms.

1 21. Accordingly, the Court hereby orders and declares: (i) the Settlement
2 Agreement is binding upon all Parties and Class Members; (ii) the Settlement Agreement shall
3 be preclusive in all pending and future lawsuits or other proceedings against Defendant arising
4 from the facts alleged in these Actions; and (iii) the Settlement Agreement and this Order shall
5 have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings
6 maintained against Defendant by or on behalf of Plaintiffs or any other Class Member, as well
7 as each of their heirs, executors, administrators, successors and assigns. Upon the Effective
8 Date, the Settlement Agreement shall be the exclusive remedy against Defendant for
9 satisfaction of any and all Released Claims of Class Members who did not properly and timely
10 exclude themselves from the Class.

11 22. The Court hereby incorporates the release in the Settlement Agreement. Thus,
12 the Released Parties are and shall be released and forever discharged from all manner of
13 claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities
14 of any nature whatsoever (whether such claims, demands, actions, suits, causes of action,
15 damages or liabilities arise or are incurred before, during or after the date hereof), including
16 costs, expenses, penalties, and attorneys' fees known or unknown, suspected or unsuspected,
17 in law or equity, that Plaintiffs or any member or members of the Class or Class Counsel,
18 whether or not they object to the Settlement and whether or not they make a claim upon or
19 participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have,
20 directly, indirectly, representatively, derivatively or in any other capacity (the "Releasor(s)"),
21 arising from or related to any conduct, events or transactions, prior to the date hereof, alleged
22 or which could have been alleged in the instant matter, relating to the alleged Labor Code
23 violations (the "Released Claims"). Except for enforcing this Settlement Agreement, each
24 member of the Class hereby covenants and agrees that they shall not, hereafter, seek to
25 establish liability against any Released Party based, in whole or in part, on any of the Released
26 Claims. Should any Class Members breach this covenant not to sue, the Released Parties may
27 seek equitable and legal remedies, including the recovery of attorneys' fees incurred in
28

1 responding to such breach. Without in any way limiting the definition of Released Parties, the
2 following specific entity is a Released Party: PATH Ventures.

3 23. In addition, each Releasor hereby expressly waives and releases, upon this
4 Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by
5 section 1542 of the Civil Code, and any law of any state or territory of the United States, or
6 principle of common law, which is similar, comparable, or equivalent to section 1542 of the
7 Civil Code. Civil Code section 1542 provides:

8 General Release – Claims Extinguished.

9 A general release does not extend to claims that the creditor or
10 releasing party does not know or suspect to exist in his or her
11 favor at the time of executing the release and that, if known by
12 him or her, would have materially affected his or her settlement
13 with the debtor or released party.

14 Each member of the Class and each other Releasor may hereafter discover facts other
15 than or different from those which they know or believe to be true with respect to the Released
16 Claims. Nevertheless, each Class Member and each other Releasor hereby expressly waives
17 and fully, finally, and forever settles and releases, upon this Settlement Agreement becoming
18 final, the Released Claims, whether any Released Claim is known or unknown, suspected or
19 unsuspected, contingent or non-contingent, concealed or hidden, without regard to the
20 subsequent discovery or existence of such different or additional facts.

21 24. Nothing in this order shall be construed to expand Defendant’s obligations under
22 the Settlement Agreement or to impose obligations on Defendant other than those contained
23 in the Settlement Agreement.

24 **B. Reservation of Jurisdiction**

25 21. Without affecting the finality of this Judgment and Final Order, the Parties have
26 submitted to the exclusive and continuing jurisdiction of this Court, and this Court reserves
27 exclusive and continuing jurisdiction over the Settlement, including administration,
28 consummation, and interpretation of the Settlement Agreement. Pursuant to California Rules

1 of Court, rule 3.769(h), the Court retains exclusive and continuing jurisdiction over the Parties
2 to enforce the terms of this judgment.

3 22. The Court orders class counsel to file a final report summarizing all distributions
4 made pursuant to the approved settlement, supported by declaration. The Court will set a non-
5 appearance date for submission of a final report for February 6, 2024. Report to be filed at
6 least 10 court days in advance.

7 **C. Entry of Final Judgment**

8 22. Pursuant to Code of Civil Procedure sections 578, 579, and 664.6, the Court, in
9 the interests of justice, there being no just reason for delay, directs the Clerk of the Court to
10 enter this Final Approval Order and Judgment, and hereby decrees that upon entry it shall be
11 deemed a Final Judgment with respect to all claims asserted by Class Members against
12 Defendant.

13 23. The Court directs that judgment be entered against Defendant pursuant to the
14 terms of the Settlement Agreement.

15
16 **IT IS HEREBY ORDERED.**



A handwritten signature in black ink that reads "Stuart M. Rice".

17
18 Dated: ~~April 4, 2023~~
19

Stuart M. Rice / Judge

20 HON. STUART M. RICE
21 JUDGE OF THE SUPERIOR COURT
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