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MAY 22 2018

FILED
ALAMEDA COUNTY
MAY 22 2018

Counsel for Plaintiff KIMBERLY GEORGE

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

11 KIMBERLY GEORGE, individually, and on
12 behalf of all others similarly situated,

Plaintiff,

14 vs. RETAIL MERCHANDISING
15 SOLUTIONS, INC., and DOES 1 through 10,
16 inclusive,

Defendants.

CASE NO. RG16828194

Assigned for All Purposes To:
Hon. Brad Seligman
Dept. 23

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: May 15, 2018
Time: 3:00 p.m.
Dept.: 23

Reservation No: 1950496

Courtesy Copy
By FAX

1 The Court, having read the papers filed regarding Plaintiff's unopposed Motion for
2 Preliminary Approval of Class Action Settlement, and having heard argument regarding the
3 Motion on May 15, 2018, hereby finds and ORDERS as follows:

4 1. The Joint Stipulation of Class Action Settlement and Release ("Joint Settlement")
5 attached as Exhibit 1 to the Declaration of J. Kirk Donnelly filed in support of Plaintiff's
6 unopposed Motion for Preliminary Approval of Class Action Settlement, filed on or about April
7 19, 2018, is within the range of possible recovery and, subject to further consideration at the Final
8 Approval Hearing described below, is preliminarily approved as fair, reasonable, and adequate;

9 2 For purposes of settlement only, the Court provisionally conditionally certifies the
10 following class: All individuals employed by defendant Retail Merchandising Solutions, Inc.
11 ("RMSI") as a Merchandiser (as defined in the Joint Stipulation) in the State of California at any
12 time from August 22, 2012 up to and including the date of this Order.

13 3. The Court finds the Settlement Class, consisting of approximately 3,700 members,
14 is so numerous that joinder of all members is impracticable, and that the Settlement Class is
15 ascertainable by reference to the business records of defendant RMSI.

16 4. The Court finds further there are questions of law and fact common to the entire
17 Settlement Class, which common questions predominate over any individualized questions of law
18 or fact. These common questions include, without limitation: (1) whether RMSI paid Settlement
19 Class Members for all hours worked, (2) whether RMSI provided Settlement Class Members with
20 full reimbursement for reasonable and necessary business expenses, and (3) whether RMSI
21 provided Settlement Class Members with all required meal and rest periods.

22 5. The Court finds further the claims of named Plaintiff Kimberly George are typical
23 of the claims of the Settlement Class, and that she will fairly and adequately protect the interests
24 of the Settlement Class. Accordingly, the Court appoints Kimberly George as the Class
25 Representative, and appoints her counsel of record, J. Kirk Donnelly and the Law Offices of J.
26 Kirk Donnelly, APC, as Class Counsel.

27 6. The Court finds further that certification of the Settlement Class is superior to
28 other available means for the fair and efficient adjudication of the controversy.

1 7. The Court finds further that, in the present case, the proposed method of providing
2 notice of the Settlement to the Settlement Class via First Class U.S. Mail to each Settlement Class
3 Member's last known address, is reasonably calculated to notify the Settlement Class Members of
4 the proposed Settlement and provides the best notice possible under the circumstances. The
5 Court also finds the Notice of Class Action Settlement form, a copy of which is attached hereto as
6 Exhibit A, is sufficient to inform the Settlement Class Members of the terms of the Settlement
7 and their rights thereunder, including the right to object to the Settlement or any part thereof and
8 the procedure for doing so, their right to exclude themselves from the Settlement and the
9 procedure for doing so, their right to obtain a portion of the Settlement proceeds, and the date,
10 time and location of the Final Approval Hearing. The proposed Notice of Class Action
11 Settlement, Exhibit A hereto, and the procedure for providing Notice set forth in the Joint
12 Stipulation, are approved by the Court.

13 8. Under the terms of the Joint Stipulation, the Court approves the Parties' selection
14 of Phoenix Settlement Administrators as the Settlement Administrator. The Settlement
15 Administrator is ordered to mail the Class Notice to the Settlement Class Members via First-Class
16 U.S. Mail as specified in the Joint Stipulation, and to otherwise carry out all other duties set forth
17 in the Joint Stipulation. The Parties are ordered to carry out and comply with all terms of this
18 Order and the Joint Stipulation, and particularly with respect to providing the Settlement
19 Administrator all information necessary to perform its duties under the Joint Stipulation.

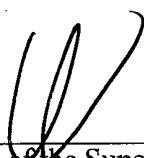
20 9. Any member of the Settlement Class who wishes to comment on or object to the
21 Settlement or any term thereof, including any proposed award of attorney's fees and costs to
22 Class Counsel or any proposed representative enhancement to the Class Representative, shall
23 have sixty (60) days from the mailing of the Class Notice to file his or her comments and/or
24 objection with the Court and provide copies to all counsel, as set forth in the Joint Stipulation and
25 Class Notice.

26 10. A Final Approval Hearing is hereby set for September 18, 2018, at 3:00 p.m. in
27 Department 23 of the Alameda County Superior Court, to consider any objections to the
28 Settlement, determine if the proposed Settlement should be found fair, adequate and reasonable

1 and given full and final approval by the Court, and to determine the amount of attorney's fees and
2 costs awarded to Class Counsel; the amount of any representative enhancement award to the
3 Class Representative, and to approve the fees and costs payable to the Settlement Administrator.
4 All legal memoranda, affidavits, declarations, or other evidence in support of the request for final
5 approval, the award of attorney's fees and costs to Class Counsel, the enhancement award to the
6 Class Representative, and the fees and costs of the Settlement Administrator, shall be filed no
7 later than sixteen (16) court days prior to the Final Approval Hearing. The Court reserves the
8 right to continue the Final Approval Hearing without further notice to the Settlement Class
9 Members.

10 11. Provided he or she submitted a timely and valid Notice of Intent to Appear at the
11 Final Approval Hearing as set forth in the Joint Stipulation and Class Notice, and further provided
12 he or she has not submitted a timely and valid Request for Exclusion, any Settlement Class
13 Member may appear, personally or through his or her own counsel, and be heard at the Final
14 Approval Hearing.

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16 Dated: 5/22, 2018

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18 _____
19 Judge of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**IF YOU WORKED AS A MERCHANDISER FOR RETAIL
MERCHANDISING SOLUTIONS, INC. IN THE STATE OF
CALIFORNIA, YOU MAY OBTAIN PAYMENTS FROM A
SETTLEMENT REACHED IN A PROPOSED CLASS ACTION
LAWSUIT**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE
AFFECTED.**

This Notice is court approved. This is not a solicitation from an attorney.

YOUR RIGHTS AND OPTIONS IN THE SETTLEMENT	
DO NOTHING	<p>Receive compensation but lose rights to sue separately.</p> <p>If you do nothing, you will receive compensation for your claims alleged in this lawsuit. You will also give up your rights to ever sue RMSI about any of the claims in this case.</p>
EXCLUDE YOURSELF FROM THE SETTLEMENT	<p>Get no compensation but keep rights to sue separately.</p> <p>If you ask exclude yourself from the settlement you will not receive any compensation from the settlement, but you will keep your rights to file a separate claim. Please be advised, however, that the time limits for filing a separate claim may have expired.</p>
OBJECT OR COMMENT	<p>Tell the Court why you like or don't like the settlement.</p> <p>You may write to the Court, or you may appear personally or through your own attorney and your own expense, and tell the Court about why you do or do not like the settlement. You must remain a part of the lawsuit to comment or object to the settlement, and you cannot object if you also ask to be excluded.</p>
<p>These rights and options – and the time deadlines for exercising them – are explained further in this Notice.</p>	

WHY DID I GET THIS NOTICE?

You have received this Notice because we believe that you are a class member who may be entitled to money from this settlement.

This Notice describes a proposed settlement of the lawsuit *George v. Retail Merchandising Solutions, Inc.*, pending in the Alameda County Superior Court, Case No. RG16828194 (the "Lawsuit"). This Notice is being sent to you by the order of the Alameda County Superior Court, which preliminarily approved the settlement and conditionally certified the Settlement Class on [DATE OF PRELIMINARY APPROVAL].

This Notice informs you of the terms of the proposed settlement, describes your rights and options in connection with the settlement, and explains what steps you may take to participate in, object to, or exclude yourself from, the settlement. **If you do not exclude yourself from the settlement and the settlement is finally approved by the Court, you will receive a settlement payment and be bound by the terms of the settlement and any final judgment.**

WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit was filed by Plaintiff Kimberly George ("Plaintiff") on behalf of individuals who worked as Merchandisers for Retail Merchandising Solutions, Inc. ("RMSI") in California between August 22, 2012 and [DATE OF PRELIMINARY APPROVAL].

The Lawsuit alleges RMSI failed to pay Merchandisers for all hours worked, particularly with respect to drive time, in violation of California law. The Lawsuit also alleges RMSI failed to properly and fully reimburse Merchandisers for work-related mileage expenses. Finally, the Lawsuit alleges Merchandisers missed meal and rest breaks because drive time was not properly recorded. RMSI denies each and all of the claims and contentions alleged by the Plaintiff. The Court has not made any rulings regarding the merits of the Lawsuit.

After engaging in extensive investigation and a full day of mediation before an experienced mediator, in which both sides recognized the substantial risks of an adverse result in the Lawsuit for either side, Plaintiff and Defendant agreed on a class settlement that was preliminarily approved by the Court on [DATE OF PRELIMINARY APPROVAL]. Plaintiff and Class Counsel support the settlement.

The settlement represents a compromise of highly disputed claims. Nothing in the settlement is intended to or will be construed as an admission by RMSI that Plaintiff's claims in the Lawsuit have merit or that it has any liability to Plaintiff or the Class on those claims.

The parties and their counsel have concluded that the settlement is advantageous, considering the risks and uncertainties to each side of continued litigation and trial.

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who have similar claims. Kimberly George is the Class Representative in the Lawsuit, and she asserts claims on behalf of herself and the Class Members. All of the Class Members form a Class. A class

action allows one court to resolve the claims of all the Class Members at the same time. A California Superior Court judge, Judge Brad Seligman, is in charge of this class action.

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or RMSI. Instead, both sides agreed to a settlement. That way, both sides avoid the risks and costs of a trial, and people affected will quickly receive compensation. The Class Representative and the attorneys think the settlement is best for the Class.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All individuals who worked for RMSI as a Merchandiser in California from August 22, 2012 through the [DATE OF PRELIMINARY APPROVAL], are included in the Class. This includes individuals who held the job titles of Project Merchandiser, Project Trainer, Remodel Merchandiser, Remodel Team Lead, Team Lead, Wave Merchandiser, Wave Trainer, or any similar position however titled.

According to RMSI's records, you are member of the Class and eligible for payments under the settlement. If you are still not sure if you are entitled to participate in the settlement, please call

[SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER]

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against it and final disposition of the Lawsuit, RMSI will pay One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) ("Class Settlement Amount"). After attorney's fees and costs, a service payment to the Plaintiff, a payment to the California Labor and Workforce Development Agency, and settlement administration costs are deducted from the Class Settlement Amount, the remaining "Net Settlement Amount" will be distributed to Participating Class Members. Subject to Court approval, the Class Settlement Amount will be allocated as follows:

- **Individual Settlement Payment:** Each Participating Class Member will receive a payment based on factors specific to them, including the total compensation they were paid by RMSI during the relevant time period.

Individual Settlement Payments will be calculated as follows: first, each Class Member's total compensation during the relevant time period will be totaled. Then, each Class Member will receive his or her percentage of the Net Settlement Amount based what that Class Member's percentage share of the total wages paid to all Class Members was. For example, if a Class Member was paid 0.025% of all wages RMSI paid to Merchandisers during the relevant time period, then that Class Member will receive 0.025% of the Net Settlement Amount. This way, Merchandisers who worked for RMSI for longer periods of time, were paid more, and/or drove more miles, will receive a larger share of the settlement than Merchandisers who worked for shorter periods of time, worked fewer shifts and hours, and/or did less driving.

- **Class Representative Service Payment:** For acting as the Class Representative, Plaintiff will request from the Court an award of \$2,500.00 in recognition of and as compensation for her efforts, such as starting the Lawsuit, volunteering time to assist with the case, and providing information and documents, as well as risks she assumed in starting and assisting with the

prosecution of the Lawsuit. Any amount ordered by the Court will be paid from the Class Settlement Amount.

- **Class Counsel's Attorney's Fees and Costs:** Class Counsel will request from the Court no more than thirty percent (30%) of the Class Settlement Amount (\$360,000.00) as attorney's fees for litigation and resolution of the Lawsuit. Class Counsel will also request from the Court reimbursement for litigation costs advanced on behalf of the Class, which are estimated to be no more than \$10,000.00. Any amount ordered by the Court for Class Counsel's attorney's fees and costs will be paid from the Class Settlement Amount.
- **PAGA Payment:** \$10,000.00 from the Class Settlement Amount is allocated for payment to the State of California under the Private Attorneys General Act of 2004. Upon Court approval, 75% of the allocation (\$7,500.00) will be paid to the California Labor and Workforce Development Agency, and 25% (\$2,500.00) of the allocation will be distributed to the Class as part of the Net Settlement Amount. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **Settlement Administration:** The costs of settlement administration will not exceed \$21,000.00, which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- All checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. After that time, half of the money corresponding to any unclaimed or uncashed checks will be sent to the East Bay Community Law Center, which is a non-profit charitable organization dedicated to providing a wide variety of free legal services to low-income and disadvantaged individuals in the Bay Area community. The other half of the money corresponding to any unclaimed or uncashed checks will be sent to the California State Treasury, as required by law, for deposit in the Trial Court Improvement and Modernization Fund and the Equal Access Fund of the Judicial Branch.

WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT, AND HOW MUCH WILL I RECEIVE?

You do not need to do anything to receive a payment from the settlement.

RMSI's records show that, while you worked as a Merchandiser during the relevant time period, you were paid total compensation of [AMOUNT]. Accordingly, your anticipated settlement share is [AMOUNT]. The actual amount may vary somewhat based on the actual implementation of the settlement.

25% of your payment will be issued in a check representing unpaid wages with applicable federal, state, and local tax withholdings taken out, and you will be sent an IRS Form W-2 for tax purposes (just like a paycheck). 75% of your payment will be issued in a check representing unreimbursed expenses, penalties, and interest, and you will be issued an IRS Form 1099 for tax purposes. You will need to speak with an accountant or other tax professional about any tax issues related to your settlement checks.

If you dispute the information about the amount of your anticipated settlement share, you must advise the Settlement Administrator and follow the steps below to substantiate your dispute.

To dispute the amount of your anticipated settlement share you must send in the mail any records (such as paystubs, pay checks or other records) supporting your calculation of the total amount of compensation you were paid by RMSI while working as a Merchandiser along with a letter explaining the dispute, and be sure to include the last four digits of your social security number by **RESPONSE DEADLINE**. The date of the postmark will determine if it was timely mailed. The Settlement Administrator will review the information you submit along with RMSI's records and make a final determination as to the correct amount of your settlement share.

The Settlement Administrator is:

62078 RMSI
c/o Phoenix Settlement Administrators
Since
City of Phoenix Zip Code

WHAT AM I GIVING UP TO STAY IN THE CLASS AND GET COMPENSATION?

Unless you ask to be excluded, you will remain a part of the Settlement Class, and that means you can't sue, continue to sue, or be a part of any other lawsuit or proceeding making any of the same claims and allegations made in *this* case. It also means all of the Court's orders will apply to you and legally bind you. If you stay in the Settlement Class, you will be deemed to have released and discharged RMSI as well as any and all of its affiliates, employees, directors, officers, shareholders, agents, attorneys, successors and assigns, from any and all claims, causes of action or obligations of any kind or nature whatsoever (including claims that have been or could have been asserted against them in this lawsuit or in any other lawsuit or claim in any other court or forum), known or unknown, that were alleged or could have been alleged based on the factual allegations regarding unpaid wages, unpaid expense reimbursement, and missed meal and rest breaks alleged in the First Amended Complaint or identified in the Joint Stipulation of Class Action Settlement and Release.

The Settlement Agreement contains additional details about the scope of the Release and Released Claims, and may be viewed online at the Settlement Administrator's website listed below.

DO I HAVE A LAWYER IN THIS CASE?

The Court has decided the law firm below is qualified to represent you and the Settlement Class. This law firm is called "Class Counsel."

Law Offices of J. Kirk Donnelly, APC
4370 La Jolla Village Drive, Suite 800
San Diego, California 92122
Telephone: (858) 260-6170
kdonnelly@jkd-law.com

If you want to be represented by your own lawyer, you may hire one at your own expense.

WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. To do so, you must submit a written opt out request to the Settlement Administrator at the following address:

Proctor, KMS
c/o Phoenix Settlement Administrators
Suite
City, California Zip Code

To be valid, a written request for exclusion must: (1) state your name, address, telephone number, and last four digits of your social security number; (2) be signed by you; (3) be mailed by first-class mail no later than [RESPONSE DEADLINE] to the Settlement Administrator at the above address; and (4) clearly state that you do not wish to be included in the settlement. The date of the postmark will determine if your opt out request was timely mailed. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement and payment of the Class Settlement Amount, including the Release described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement. Class Counsel will not represent your interests if you request to be excluded.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Class Member who has **not** asked to be excluded from the settlement may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. The Final Approval Hearing is scheduled to take place on September 18, 2018, at 3:00 p.m. in Department 23 of the Superior Court of the State of California for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612.

To be valid, all written objections and supporting papers if any, and/or notices of intent to appear at the Final Approval Hearing must: (1) state your full name, address and telephone number; (2) provide a written statement of all grounds for the objection accompanied by any legal support for the objection or a brief statement of why you wish to appear at the Final Approval Hearing; (3) state the last four digits of your social security number (4) be signed by you or your counsel; and (5) clearly identify the case name and number. The case name is "George v. Retail Merchandising Solutions, Inc." and the case number is "RG16828194." You may submit both an objection and a notice of intent to appear, and may include both as part of the same document.

You must submit your written objection and all supporting papers if any, and/or any notice of intent to appear at the Final Approval Hearing to the Settlement Administrator by mailing to the following address:

George R/MSI
c/o Phoenix Settlement Administrators
Street
City, California Zip Code

To be valid, your written objection, all supporting papers, and/or any notice of intent to appear at the Final Approval Hearing must be postmarked on or before [RESPONSE DEADLINE].

WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court, will bind all Class Members who do not request to be excluded from the settlement whether or not they receive or timely cash their Individual Settlement Payment. Final approval of the settlement will bar any Class Member who does not request to be excluded from the settlement from initiating a lawsuit or proceeding regarding the Released Claims.

WHAT IF MY CONTACT INFORMATION CHANGES?

If, after you receive this Notice, you change your mailing address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information.

THE FINAL APPROVAL HEARING

The Final Approval Hearing is scheduled to take place on September 18, 2018, at 3:00 p.m. in Department 23 of the Superior Court of the State of California for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612. The date and time may change without further notice to the Class.

At the Final Approval Hearing, the Court will make a final decision whether to approve the settlement, and will also decide what amounts will be awarded to Plaintiff for a service award, and to Class Counsel for attorney's fees and costs.

FURTHER INFORMATION

This Notice is only a summary of the settlement. To see a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice), the Court's Preliminary Approval Order, Class Counsel's application for attorney's fees and costs, the operative complaint filed in the Lawsuit, and other filed documents related to the Lawsuit and this settlement, you may view all such files in the following ways: 1) Online at the Settlement Administrator's Website [URL TO SETTLEMENT ADMIN. WEB PAGE]. 2) Online on the Alameda County Superior Court's website, known as 'DomainWeb' at <https://publicrecords.alameda.courts.ca.gov/PRS/>. After arriving at the website, click the 'Search By Case Number' link, then enter RG16828194 and click 'SEARCH.' Images of every document filed in the case may be viewed through the 'Register of Actions' at a minimal charge. 3) You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. The Rene C. Davidson Courthouse located at 1225 Fallon Street, Oakland, California 94612 and the Hayward Hall of Justice located at 24405 Amador Street, Hayward, California 94544 have these kiosks available.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [REDACTED] or Class Counsel listed above. Please refer to the RMSI Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT WITH QUESTIONS OR FOR INFORMATION REGARDING THIS SETTLEMENT