

Courtesy Copy

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AUG 24 2018

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and the Settlement Class

**FILED**  
ALAMEDA COUNTY

SEP 18 2018

CLERK OF THE SUPERIOR COURT

By  Deputy

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

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

Plaintiff,

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

Defendants.

CASE NO. RG16828194

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

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

Date: September 18, 2018  
Time: 3:00 p.m.  
Dept.: 23

Reservation No.: R-1986980

The Court, having read the papers filed with regard to Plaintiff's unopposed motion for final approval of a class action settlement, and having heard argument on the motion on September 18, 2018, hereby finds and ORDERS as follows:

1. The Court has jurisdiction over this matter and over all parties to the action, including the members of the Settlement Class.
2. The Joint Stipulation of Settlement and Release ("Joint Stipulation"), attached as Exhibit 1 to the Supplemental Declaration of J. Kirk Donnelly filed on or about May 22, 2018, is

1 the product of arms-length negotiations between the parties and the terms of the Joint Stipulation  
2 are fair, reasonable, adequate, and in the best interests of the Settlement Class. The Joint  
3 Stipulation therefore is finally approved, and its terms incorporated herein. The Court orders the  
4 parties to the Joint Stipulation to perform forthwith their respective duties and obligations under  
5 the Joint Stipulation.

6 3. The Settlement Class, which was provisionally certified by the Court in its May  
7 22, 2018 Order Granting Preliminary Approval, hereby is certified under California Code of Civil  
8 Procedure Section 382 for purposes of settlement only. The Settlement Class includes all persons  
9 who worked for defendant Retail Merchandising Services, Inc. ("RMSI") in one or more of the  
10 following positions: Project Merchandiser, Project Trainer, Remodel Merchandiser, Remodel  
11 Team Lead, Team Lead, Wave Merchandiser, Wave Trainer, or any similar position however  
12 titled, at any time between August 22, 2012 and May 22, 2018, inclusive.

13 4. The Court adjudges the Participating Class Members, to the extent provided by the  
14 Joint Stipulation, be deemed to have conclusively released and discharged the Released Parties  
15 (as defined in the Joint Stipulation) from any and all causes of action, claims, rights,  
16 damages, punitive or statutory damages, penalties, liabilities, expenses, and losses alleged  
17 in the operative complaint or which could reasonably have been alleged in the operative  
18 complaint based on the facts alleged therein, including, but not limited to: (a) any alleged  
19 failure by Defendant (1) to pay wages, minimum wages, or overtime; (2) to provide meal  
20 or rest periods or compensation in lieu thereof; (3) to provide accurate wage statements to  
21 employees; (4) to timely pay wages during employment; (5) to pay all wages due upon  
22 separation of employment; (6) to maintain payroll records; or (7) to reimburse Class  
23 Members in any manner for expenses incurred in the performance of their job duties; (b)  
24 any right or claim for civil penalties pursuant to the Private Attorneys General Act of  
25 2004, California Labor Code §§ 2698, *et seq.*, or any penalties arising under the Labor  
26 Code or Wage Orders based on the alleged failures set forth in (a)(1) through (a)(7)  
27 above; or (c) any right or claim for unfair business practices in violation of California  
28 Business & Professions Code §§ 17200, *et seq.*, based on the alleged failures set forth in

1 (a)(1) through (a)(7) above; and (d) any violation of the California Labor Code arising  
2 from or related to the conduct alleged in (a)(1) through (a)(7) above, including, without  
3 limitation, violation of Labor Code Sections 201, 202, 203, 204, 218.5, 218.6, 221, 226,  
4 226.3, 226.6, 226.7, 450, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1,  
5 1198, 2802, 2698 *et seq.*, or any other state statute, rule and/or regulation (Wage Order),  
6 or similar causes of action which any Class Member has or might have, known or  
7 unknown, of any kind whatsoever, that was alleged or could have been alleged based on  
8 the factual allegations in the operative complaint.

9 5. The Court bars and permanently enjoins Plaintiff and the Participating Class  
10 Members from asserting, initiating or prosecuting, directly or indirectly, any of the Released  
11 Claims, that any Participating Class Member has, had, or may have, to the extent provided in the  
12 Joint Stipulation.

13 6. Two individuals, Gregory Dettman and Amos Thompson, submitted valid and  
14 timely requests to be excluded from the Settlement. These two individuals therefore are excluded  
15 from the Class and are not bound by the Joint Stipulation and this Order and Final Judgment.

16 7. The Settlement Administrator is ordered to distribute the Participating Class  
17 Members their respective shares of the Net Settlement Fund as provided in the Joint Stipulation.  
18 Funds attributable to uncashed checks that remain after the void date shall be distributed as  
19 follows: Fifty percent (50%) to the East Bay Community Law Center as *cy pres* beneficiary,  
20 Twenty Five percent (25%) to the California State Treasury for deposit in the Trial Court  
21 Improvement and Modernization Fund, and Twenty Five percent (25%) to the California State  
22 Treasury for deposit in the Equal Access Fund of the Judicial Branch. No funds shall revert to  
23 defendant RMSI.

24 8. The hourly rates claimed by Class Counsel the Law Offices of J. Kirk Donnelly,  
25 APC are reasonable, appropriate, and consistent with the rates charged in the San Francisco Bay  
26 Area for attorneys with similar qualifications, skill, and experience. The hours expended by Class  
27 Counsel on the litigation are reasonable. Further, the costs incurred by Class Counsel were  
28 reasonable and necessary for the successful prosecution of the case. Accordingly, the Court

1 approves Class Counsel's request for an award of attorney's fees in the amount of \$360,000.00  
2 and award of costs and expenses in the amount of \$10,000.00. Such amounts shall be paid as  
3 provided in the Joint Stipulation, provided however the Settlement Administrator shall withhold  
4 the greater of 10% or \$5,000.00 of the attorney's fees award, and shall hold such funds in an  
5 interest bearing account pending submission and approval of a final compliance status report  
6 upon completion of the distribution process. A compliance hearing is set for May 14, 2019, at  
7 3:00 p.m., in Department 23 of the Alameda Superior Court. The parties are ordered to file a  
8 joint compliance statement <sup>and proposed amended judgment (CC384)</sup> no later than five (5) court days before the compliance hearing.

9 9. The request for a service award to Plaintiff and Class Representative Kimberly  
10 George in the amount of \$2,500.00 is reasonable given the risks Plaintiff assumed and the amount  
11 of time Plaintiff spent assisting with prosecuting the case. The requested amount also is within  
12 the range of reasonableness for such awards approved in other cases. Accordingly, the Court  
13 approves the request for a service payment to Kimberly George in the amount of \$2,500.00, and  
14 the Settlement Administrator is ordered to make such payment consistent with the terms of the  
15 Joint Stipulation.

16 10. The Court finds and determines payment to the California Labor and Workforce  
17 Development Agency of \$7,500.00 as its share of the settlement of civil penalties under the  
18 California Private Attorneys General Act, Labor Code Sections 2698, *et seq.*, is fair, appropriate,  
19 and reasonable. The Court hereby finally approves said payment and orders the payment be made  
20 in accordance with the terms of the Joint Stipulation.

21 11. The Joint Stipulation provides that the Settlement Administrator, Phoenix  
22 Settlement Administrators, shall be paid from the Settlement Fund in an amount not to exceed  
23 \$21,000.00. As set forth in the Declaration of Elizabeth Kruckenberg and Exhibit B thereto, the  
24 Settlement Administrator is owed \$21,000.00 for services rendered and to be rendered in  
25 administering the settlement. The Court therefore orders that Phoenix Settlement Administrators  
26 be paid the amount of \$21,000.00 from the Settlement Fund consistent with the terms of the Joint  
27 Stipulation.

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1           12. Under California Rule of Court 3.769(h), without affecting the finality of this  
2 Order and Judgment in any way, the Court retains jurisdiction over: (1) implementation and  
3 enforcement of the Joint Stipulation pursuant to further orders of this Court until the final  
4 judgment contemplated becomes effective and each and every act agreed to be performed by the  
5 parties has been performed under the terms of the Joint Stipulation; (2) any other action necessary  
6 to conclude this settlement and to implement the Joint Stipulation; and (3) the enforcement,  
7 construction, and interpretation of the Joint Stipulation.

8           13. Neither this Order nor the Joint Stipulation upon which it is based are an  
9 admission or concession by any party of any fault, omission, liability or wrongdoing. This Order  
10 is not a finding of the validity or invalidity of any claims in this action or a determination of any  
11 wrongdoing by any party. The final approval of the parties' settlement will not constitute any  
12 opinion, position or determination of this Court as to the merits of the claims or defenses of any  
13 party.

14           14. Judgment is hereby entered as follows: Plaintiff Kimberly George and the  
15 Settlement Class Members consisting of all persons who worked for defendant Retail  
16 Merchandising Services, Inc. in one or more of the following positions: Project Merchandiser,  
17 Project Trainer, Remodel Merchandiser, Remodel Team Lead, Team Lead, Wave Merchandiser,  
18 Wave Trainer, or any similar position however titled, at any time between August 22, 2012 and  
19 May 22, 2018, inclusive, who have not otherwise opted out, shall take nothing from defendant  
20 Retail Merchandising Solutions, Inc. except as set forth in the Joint Stipulation of Class Action  
21 Settlement and Release attached as Exhibit 1 to the Supplemental Declaration of J. Kirk Donnelly  
22 filed on May 22, 2018. The Court shall retain jurisdiction over the parties to interpret, implement  
23 and enforce this Judgment.

24  
25 DATED: 2/18/18

  
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JUDGE OF THE SUPERIOR COURT