



FILE
San Francisco County Superior Court

FEB 25 2019

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

Thomas Pazo, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

Incredible Adventures, Inc., a California
Corporation, and DOES 1-10,

Defendant.

CASE NO. CGC-16-555971

CLASS ACTION

**ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
CLASS COUNSEL'S ATTORNEYS' FEES,
LITIGATION COSTS, AND CLASS
REPRESENTATIVE SERVICE AWARD**

1 On January 18, 2019, the Court held a hearing on the motion of Plaintiff Thomas Pazo
2 (“Plaintiff”) for final approval of his class action settlement with Defendant Incredible Adventures,
3 Inc. (“Defendant”)¹ embodied in the Parties’ Revised Joint Stipulation of Settlement and Release of
4 Class Action (the “Settlement”) including Plaintiff’s and Class Counsel’s motion for final approval
5 of the Class Counsel’s award of attorneys’ fees, litigation costs, and class representative service
6 award. Ackermann & Tilajef, P.C. appeared for Plaintiff, and Rukin Hyland & Riggin LLP appeared
7 for Defendant.

8 Having read and considered the Settlement and the papers filed in support of Plaintiff’s
9 unopposed motion for final approval and Plaintiff’s and Class Counsel’s papers requesting final
10 approval of the Class Representative Service Award, the Class Counsel attorneys’ fees, and the
11 Class Counsel litigation costs, Plaintiff’s supplemental filing in response to the tentative ruling,
12 Plaintiff’s supplemental filing in response to the January 24, 2019 order, Plaintiff’s supplemental
13 filing in response to the February 6, 2019 order,³ and the evidence and argument received by the
14 Court on all of these motions,

15 **IT IS ORDERED THAT:**

16 1. All terms used in this Order shall have the same meanings given those terms in the
17 parties’ Settlement. A copy of the Settlement is attached as Exhibit A to the Supplemental
18 Declaration of Craig Ackermann in Support of Plaintiff’s First Amended Motion and Motion for
19 Preliminary Approval of Class Action Settlement filed on August 20, 2018.

20 2. The Court has jurisdiction over the subject matter of this litigation, Plaintiff, the
21 Class Members, and Defendant.

22 3. The Court is satisfied that CPT Group, Inc., which functioned as the Settlement
23 Administrator, completed the distribution of Class Notice and Share Forms to the Class in a manner
24 that comports with California Rule of Court 3.766 and substantially complied with the Court’s
25 preliminary approval order. The Class Notice informed the Class Members of the Settlement terms,
26

27 ¹ Plaintiff and Defendant are referred to collectively as the “Parties.”

28 ³ This matter was taken under submission on February 22, 2019 because the Court has not been notified by the LWDA or the parties of the LWDA’s position on the proposed settlement.

1 their rights to participate in the settlement, their right to challenge their estimated Settlement
2 Amount, their rights to exclude themselves from the Settlement, their rights to comment on or object
3 to the Settlement, and their rights to appear at the Final Approval Hearing and be heard regarding
4 approval of the Settlement. Adequate periods of time to respond to the Class Notice were provided.
5 The notice procedure afforded adequate protections to Class Members and provides the basis for the
6 Court to make an informed decision regarding approval of the Settlement based on the Class
7 Members' responses. The Court determines that the notice provided in this Action was the best
8 notice practicable, which satisfied the requirements of law and due process.

9 4. No Class Members objected to the Settlement.

10 5. No Class Members elected to exclude themselves from the Settlement.

11 6. For settlement purposes only, the Court certifies the following Class:

12 Plaintiff and all other individuals employed in California by Defendant in the
13 positions of CEO (chief experience officers) and/or tour guides/drivers who
14 provided transportation and guided tours in California from December 16, 2012
through August 29, 2018.

15 7. The Court finally appoints Plaintiff Thomas Pazo as Class Representative, and Craig
16 Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C. and Jonathan Melmed of Melmed
17 Law Group P.C. as adequate Class Counsel.

18 8. The terms of the Settlement, including the individual Settlement Amounts, are fair,
19 adequate and reasonable to the Class and to each Class Member, and the Courts grants final
20 approval of the Settlement set forth in the Agreement. The Court orders the Parties to comply with
21 and carry out all terms and provisions of the Settlement and this order.

22 9. The \$15,000 incurred by CPT Group, Inc., the Settlement Administrator, is fair and
23 reasonable. The Court grants final approval of, and orders the Parties to make the payment to the
24 Settlement Administrator in this amount in accordance with the Settlement.

25 10. The \$37,500.00 amount requested by Plaintiff and Class Counsel for the Class
26 Counsel Fees Payment is fair and reasonable. The Court grants final approval of, and orders the
27 Class Counsel attorneys' fees payment to be made in accordance with the Agreement.
28

1 11. The \$10,000.00 amount requested by Plaintiff and Class Counsel for reimbursement
2 of the Class Counsel's litigation expenses is fair and reasonable. The Court grants final approval of,
3 and orders the Class Counsel's litigation expenses in this amount to be made in accordance with the
4 Agreement.⁴

5 12. A \$2,000.00 service award is fair and reasonable given that the amount of time and
6 effort that the Class Representative expended, the benefits conferred on the Class, and the risks
7 undertaken by him. The Court grants a \$2,000.00 service award.

8 13. \$2,000.00 of the settlement proceeds are allocated to resolution of the PAGA claims,
9 of which 75 percent (\$1,500.00) is to be disbursed to the Labor Workforce and Development
10 Agency and the remaining 25 percent (\$500.00) is to be distributed to the Class Members in
11 accordance with the Settlement.

12 14. In accordance with §§ I.29-I.30 of the Settlement, all Class Members release all
13 Released Claims against the Released Parties. The Released Claims are defined in the Settlement as
14 follows: "any and all claims alleged in the First Amended Complaint, and all claims arising from
15 the causes of actions, claims and facts alleged in the FAC, specifically including claims under Labor
16 Code sections 201-203, 226(a), 226.7, 512, 558, IWC Wage Order No. 9, sections 11 and 12, and
17 claims under Sections 17200-17204 of the California Business and Professions Code and Labor
18 Code sections 2698-99 for PAGA penalties based on the foregoing alleged violations." The
19 Settlement will not release any person, party or entity from claims, if any, by Class Members for
20 workers compensation, unemployment, or disability benefits of any nature, nor does it release any
21 claims, actions, or causes of action which may be possessed by Settlement Class Members under
22 state or federal discrimination statutes, including without limitation the California Fair Employment
23 and Housing Act, the California Government Code § 12940, *et seq.*, the Unruh Civil Rights Act, the
24 California Civil Code § 51, *et seq.* the California Constitution; Title VII of the Civil Rights Act of
25 1964, 42 U.S.C. § 2000, *et seq.*, the Americans with Disabilities Act, as amended, 42 U.S.C. §

26 _____
27 ⁴ Plaintiff's counsel actually incurred litigation costs in the amount of \$13,301.75; however,
28 Plaintiff's counsel is only requesting reimbursement of litigations costs of \$10,000, the amount
contemplated by the Settlement Agreement, preliminarily approved by this Court, and noticed to the
Class.

1 12101, *et seq.*, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §
2 1001 *et seq.*, and all of their implementing regulations and interpretive guidelines.

3 15. Notice of final judgment shall be provided to the Class Members by posting this
4 Order and the final judgment on the settlement website for a period of not less than 60 days from the
5 date the judgment is entered.

6 16. The Parties shall bear his, its or their own respective attorneys' fees and costs except
7 as otherwise provided in the Settlement.

8 17. Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction over
9 Plaintiff, the Class Members, and Defendant solely for purposes of enforcing the Settlement,
10 addressing settlement administration matters, and addressing such post-Judgment matters as may be
11 appropriate under court rules or applicable law.

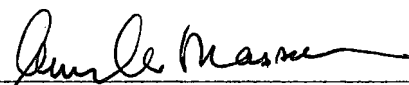
12 18. Bet Tzedek is designated as the cy pres beneficiary. If the provisions in the
13 Settlement Agreement triggering a cy pres distribution are satisfied, the cy pres distribution shall be
14 carried out in compliance with the Settlement and C.C.P. § 384.

15 19. Before the entry of judgment the court shall determine the total amount that will be
16 payable to all class members if all class members are paid the amount to which they are entitled
17 pursuant to the judgment. The court shall also set a date when the parties shall report to the court the
18 total amount that was actually paid to the class members. After the report is received, the court shall
19 amend the judgment to direct the Defendant to pay the sum of the unpaid residue or unclaimed
20 abandoned funds, plus any interest that has accrued thereon from the date of entry of the initial
21 judgment to the cy pres beneficiary.

22 20. In light of the payment plan, the Court will set a further conference re payment of the
23 Settlement Amount on the following date: March 19, 2021. Class Counsel shall file a report in
24 advance of the conference. After all payments have been made, the Court will also set a hearing
25 date to confirm that all payments have been made.

26 **IT IS SO ORDERED.**

27 Dated: 2/25/2019


HONORABLE ANNE-CHRISTINE MASSULLO
JUDGE OF THE SAN FRANCISCO SUPERIOR COURT

28

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **FEB 26 2019**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **FEB 26 2019**

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk