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Electronically  
**FILED: 12/15/21**  
San Luis Obispo Superior Court  
By: Landrum, Marlys

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Attorneys for Plaintiff,  
12 JOSHUA SILVA, and all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF SAN LUIS OBISPO**  
15 **(UNLIMITED JURISDICTION)**

16 JOSHUA SILVA, on behalf of himself, and all  
17 others similarly situated, and as an “aggrieved  
18 employee” on behalf of other “aggrieved  
19 employees” under the Labor Code Private  
Attorneys General Act of 2004,

Case No.: 19CV-0689

~~PROPOSED~~ **FINAL ORDER AND  
JUDGMENT APPROVING CLASS  
SETTLEMENT**

20 *Plaintiff(s),*

**Hearing Information**

21 vs.

Action filed: November 14, 2019  
Hearing Date: November 24, 2021  
Hearing Time: 9:00 a.m.  
Hearing Dept: 9, Hon. Tana L. Coates

22 PAYO LABORATORIES, INC., a California  
23 corporation doing business as OLD WEST  
24 CINNAMON ROLLS; JOSEPH WILL  
25 PARKHURST, a natural person; CINDY  
26 PARKHURST, a natural person; JILL  
LIENHARD, a natural person; and DOES 1  
through 50, inclusive,

27 *Defendant(s).*  
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1 This matter came on for hearing on November 24, 2021 at 9:00 a.m. in Department 9 of  
2 the above-captioned court on Plaintiff's Motion for Final Approval of a Class Action Settlement  
3 pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class  
4 Action Settlement and Release of Claims (the "Settlement") filed herewith which provides for  
5 a Gross Settlement Amount ("GSA") of \$250,000 in compromise of all disputed claims on  
6 behalf of current and former non-exempt delivery service and field service employees employed  
7 by Defendants Payo Laboratories, Inc., doing business as Old West Cinnamon Rolls, Joseph  
8 Will Parkhurst, Cindy Parkhurst, and Jill Lienhard (collectively "Defendants") who worked in  
9 California during the Class Period. All capitalized terms used herein shall have the same  
10 meaning as defined in the Settlement.

11 In accordance with the Court's prior ruling granting Preliminary Approval of Class  
12 Action Settlement, Class Members have been given notice of the terms of the Settlement and  
13 the opportunity to request exclusion, comment upon or object to it or to any of its terms. Having  
14 received and considered the Settlement, the supporting papers filed by the Parties, and the  
15 evidence and argument received by the Court in conjunction with the motions for preliminary  
16 and final approval of the Settlement, the Court grants final approval of the Settlement and  
17 **HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING**  
18 **DETERMINATIONS:**

19 1. The Court has jurisdiction over the subject matter of the Action and over all  
20 Parties to the Action, including all Class Members who did not request to be excluded from the  
21 Settlement. Pursuant to this Court's ruling granting the Motion for Preliminary Approval of  
22 Class Action Settlement of July 23, 2021, the Class Notice was sent to each Class Member by  
23 First Class U.S. mail. The Class Notice informed Class Members of the terms of the Settlement,  
24 their right to receive their proportional share of the Settlement, their right to request exclusion,  
25 their right to comment upon or object to the Settlement, and their right to appear in person or by  
26 counsel at the final approval hearing and be heard regarding final approval of the Settlement.  
27 Adequate periods of time were provided by each of these procedures. No member of the Class  
28 presented written objections to the proposed Settlement as part of this notice process, stated an  
intention to appear, or actually appeared at the final approval hearing.

2. For purposes of this Settlement, "Class", or "Class Members" or "Settlement  
Class" means all individuals Defendants employed in California as hourly employees during the



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1 Class Period. The “Class Period” means the period of time from November 14, 2015 through  
2 April 10, 2020.

3 3. The Court finds and determines that the notice procedure afforded adequate  
4 protections to Class Members and provides the basis for the Court to make an informed decision  
5 regarding final approval of the Settlement based on the responses of Class Members. The Court  
6 finds and determines that the notice provided in this case was the best notice practicable, which  
7 satisfied the requirements of law and due process as to all persons entitled to such notice.

8 4. **Release by Plaintiff and Class Members.** As of the date of the Judgment, the  
9 Settlement will release any further attempt, by lawsuit, administrative claim or action, arbitration,  
10 demand, or other action of any kind by each. and all of the Settlement Class Members (including  
11 participation to any extent in any representative or collective action), against Defendants and all  
12 of those entities’ and individual’s past, present and future agents, employees, servants, officers,  
13 directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents,  
14 subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns,  
15 predecessors, successors, service providers, insurers, consultants, subcontractors, joint  
16 employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all  
17 persons acting under, by, through or in concert with any of them, and each of them, arising during  
18 the period November 14, 2015 through April 10, 2020, and arising from, could have been  
19 asserted, or related in any way to the claims asserted in the Action against Defendants. The  
20 Settlement Class Members will release and discharge Defendants, and any of their former and  
21 present parents, subsidiaries, owners, shareholders, officers, directors, employees, affiliates,  
22 successors, assigns, agents, attorneys, legal representatives (“Released Parties”).

23 5. The Court further finds and determines that the terms of the Settlement are fair,  
24 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and  
25 provisions of the Settlement, including the release of claims contained therein, should be and  
26 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement  
27 according to its terms. As of the Effective Date of Settlement, and for the duration of the Class  
28 Period, all Class Members are hereby deemed to have waived and released all Released Claims  
and are forever barred and enjoined from prosecuting the Released Claims against the Releasees  
as fully set forth in the Settlement. No objections were received by the Parties or the Court  
through the date of this Final Order and Judgment. The Court finds that no Class Member



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1 submitted a request for exclusion from the Settlement as determined by the Settlement  
2 Administrator and therefore is/are not in the Settlement Class.

3 6. The Court finds and determines that (a) the Settlement Shares to be paid to  
4 Participating Class Members and (b) the \$3,000 payment to the LWDA for the PAGA penalty  
5 under the California Labor Code Private Attorneys General Act of 2004, as amended, California  
6 Labor Code sections 2699 et seq., as provided for by the Settlement are fair and reasonable. The  
7 Court hereby grants final approval to, and orders the payment of, those amounts be made to the  
8 Participating Class Members and to the California Labor & Workforce Development Agency,  
9 in accordance with the terms of the Settlement.

10 7. The Court further grants final approval to and orders that the following payments  
11 be made in accordance with the terms of the Settlement:

12 a. A Class Counsel Fees Payment in the amount of \$83,333.33 for  
13 attorney's fees and a Class Counsel Litigation Expenses Payment in the amount of \$4,766.08 to  
14 Class Counsel;

15 b. \$15,000.00 as a Class Representative Payment payable to Plaintiff Joshua  
16 Silva for his service as the class representative; and

17 c. \$5,000.00 in Settlement Administrator's fees payable to CPT Group, Inc.  
18 for its services as the Settlement Administrator.

19 d. Payment of \$3,000 (75% of the \$4,000 PAGA penalty) to the LWDA;  
20 and

21 e. Employer-side payroll taxes in excess of \$5,000.

22 8. The settlement administration shall proceed as directed in the Settlement, and no  
23 payments pursuant to the Settlement shall be distributed until after the date the Effective Date.  
24 Without affecting the finality of this Final Order and Judgment in any way, the Court retains  
25 jurisdiction of all matters relating to the interpretation, administration, implementation,  
26 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to  
27 California Rule of Court 3.769(h).

28 9. Within 30 calendar days of the Effective Date, Defendants shall deposit the  
Settlement proceeds in an account designated by the Settlement Administrator: (i) the total  
amount of all Settlement Shares to Participating Class Members, (ii) the Court approved Class  
Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the Court-



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1 approved costs of the Settlement Administrator, (v) the payment to the LWDA, and (vi)  
2 Defendants' employer-side payroll taxes that exceed \$5,000. Defendants shall also pay their  
3 share of the employer-side payroll taxes up to \$5,000.00.

4 10. Defendants' payment of such sums shall be the sole financial obligation of  
5 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,  
6 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and  
7 expenses.

8 11. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have  
9 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement  
10 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement  
11 Administrator shall remit any amounts from Voided Settlement Checks and otherwise  
12 unclaimed (the "Residue"), plus interest on the Residue at the legal rate of interest from the date  
13 of entry of the initial judgement, as follows: Legal Aid At Work, or alternatively the California  
14 Unclaimed Property Fund. Legal Aid At Work is referred to hereafter as the "Cy Pres  
15 Recipient."

16 12. The Parties shall file a final accounting report from the Settlement Administrator.  
17 A status conference re submission of a final report is scheduled for **October 24, 2022 at 9:00**  
18 **a.m. in Department D9**. The Parties shall also prepare and file a stipulation and proposed order  
19 and proposed Amended Final Order and Judgment which includes the amount of distribution of  
20 unpaid cash Residue, and unclaimed or abandoned funds to the non-party, the accrued interest  
21 on that sum and any other information required to be set forth pursuant to Section 68520 of the  
22 Government Code, as incorporated into CCP Section 384.5. The stipulation shall be signed by  
23 counsel for the class, defense counsel, and counsel for (or an authorized representative of) the  
24 Cy Pres Recipient in accord with the proposed Amended Final Order and Judgment. If there are  
25 objections by any party or non-party, class counsel shall immediately notify the Court and the  
26 matter will be set for further hearing. Pursuant to Section CCP 384.5, a conformed copy of the  
27 stipulation and order and Amended Final Order and Judgment (once signed by the Court) shall  
28 be forwarded by Class Counsel to the Judicial Council.

13. Nothing in this Final Order and Judgment shall preclude any action to enforce  
the Parties' obligations under the Settlement or hereunder, including the requirement that  
Defendants deposit funds for distribution by the Settlement Administrator to participating Class



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1 Members in accordance with the Settlement.

2 14. The Court hereby enters final Judgment in this case in accordance with the terms  
3 of the Settlement, Order Granting Motion for Preliminary Approval of Class Action Settlement,  
4 and this Final Order and Judgment.

5 15. The Parties are hereby ordered to comply with the terms of the Settlement.

6 16. The Parties shall bear their own costs and attorneys' fees except as otherwise  
7 provided by the Settlement and this Final Order and Judgment.

8 17. The Settlement is not an admission by Defendants nor is this Final Order and  
9 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by  
10 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used  
11 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order  
12 and Judgment, Settlement, any document referred to herein, any exhibit to any document  
13 referred to herein, any action taken to carry out the Settlement, nor any negotiations or  
14 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an  
15 admission or concession with regard to, the denials or defenses of Defendants, and shall not be  
16 offered in evidence in any proceeding against the Parties hereto in any Court, administrative  
17 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this  
18 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,  
19 and any other papers and records on file in the Action may be filed in this Court or in any other  
20 litigation as evidence of the settlement by Defendants to support a defense of res judicata,  
21 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to  
22 the Release Class Claims and the Released PAGA Claims.

23 18. This document shall constitute a Judgment for purposes of California Rule of  
24 Court 3.769(h).

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

26 Date: 12/15/2021

27   
28 \_\_\_\_\_  
Hon. Tana L. Coates  
Judge of the Superior Court



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1 PROOF OF SERVICE

2 State of California,  
3 County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County  
5 of Los Angeles, State of California. I am over the age of 18 years, and not a  
6 party to the within action. My business address is 16530 Ventura Blvd., Suite  
7 203, Encino, California 91436.

8 2. I am familiar with the practice of The Spivak Law Firm, for  
9 collection and processing of correspondence for mailing with the United  
10 States Postal Service. It is the practice that correspondence is deposited  
11 with the United States Postal Service the same day it is submitted for  
12 mailing.

13 On Tuesday, December 14, 2021, I caused to have electronically served  
14 the following document described as **[PROPOSED] FINAL ORDER AND JUDGMENT**  
15 **APPROVING CLASS SETTLEMENT** on interested parties with the email listed below:

16 **Elizabeth A. Culley, Esq.**  
17 **Andre, Morris & Buttery**  
18 **1102 Laurel Lane**  
19 **San Luis Obispo, CA 93406**  
20 [eculley@amblaw.com](mailto:eculley@amblaw.com)

21 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the  
22 electronic service addresses listed above from my electronic service  
23 address [breck@spivaklaw.com](mailto:breck@spivaklaw.com) or [boyama@spivaklaw.com](mailto:boyama@spivaklaw.com).

24 EXECUTED on Tuesday, December 14, 2021, at Los Angeles, California.

25 XXXX (State) I declare under penalty of perjury under the laws of the State  
26 of California that the above is true and correct.

27 \_\_\_\_\_ (Federal) I declare that I am employed in the office of a member of the  
28 bar of this court at whose direction the service was made.



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