

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff COURTENAY ARNESON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

COURTENAY ARNESON, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

BAHN THAI, INC. (dba Thai Basil Café / Veg
Café & Bar), a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No. 34-2021-00295429

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 28, 2022

Time: 1:30pm

Reservation ID: 2619313

Judge: Shama H. Mesiwala

Dept.: 53

Trial Date: Not Set

Action Filed: February 26, 2021

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter “Class Counsel”).

5 2. I am counsel of record for Plaintiff COURTENAY ARNESON, (hereafter “Plaintiff”) in
6 this wage and hour class action filed against BAHN THAI, Inc. (hereinafter “Defendant”).

7 3. This declaration is being submitted in support of Plaintiffs’ Motion for Final Approval of
8 Class Action Settlement.

9 4. Attached hereto as **Exhibit “A”** are true and correct copies of the fully executed
10 Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (hereinafter
11 collectively “Settlement Agreement”).

12 5. Attached hereto as **Exhibit “B”** is a true and correct copy of the conformed January 11,
13 2022, Preliminary Approval Order.

14 6. Attached hereto as **Exhibit “C”** is a true and correct copy of the June 6, 2022, proof of
15 filing the proposed Settlement with the LWDA.

16 **I. INTRODUCTION**

17 7. An objective evaluation of the proposed settlement of \$130,000 (“Total Settlement
18 Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable.
19 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
20 experienced counsel, guided by the wisdom and experience of mediator Jill R. Sperber, Esq. After
21 deducting any Court-approved attorneys’ fees and costs, class representative incentive payments,
22 administration costs, and payments to the Labor & Workforce Development Agency (“LWDA”), the
23 net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they
24 worked while employed by Defendants during the relevant time period. *The Settlement Class greeted*
25 *news of the Settlement with overwhelming approval as 100% of the Settlement Class choose to*
26 *participate in the Settlement.* There are zero opt-outs and zero objections to the Settlement. The
27
28

1 unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the
2 Settlement.

3 8. This Settlement provides substantial recovery for Defendant's alleged wage and hour
4 violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount
5 of \$59,166.67. This will result in an average Individual Settlement Payment of **\$547.84** and high
6 payment of **\$2,230.96**.

7 9. The relief offered by the Settlement is immediate and is particularly impressive when
8 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
9 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
10 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
11 litigation.

12 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
13 approval under California law and falls well within the range of reasonableness. Accordingly, Class
14 Representative and Class Counsel respectfully request this Court grant final approval of the Settlement
15 Agreement and, entry of the proposed Final Approval Order and Judgment.

16 II. OVERVIEW OF THE LITIGATION

17 11. Defendant operates a restaurant in Sacramento, California. This action asserts claims on
18 behalf of Defendant's non-exempt employees. Plaintiff worked for Defendant as a non-exempt
19 employee in California between January of 2020 to February of 2020.

20 12. Generally, Plaintiff claims that Defendant failed to pay for all time worked, including,
21 time spent waiting for and undergoing mandatory loss prevention security checks, failed to provide
22 compliant meal and rest periods, failed to provide suitable seating, failed to furnish accurate itemized
23 wage statements, and failed to pay all wages upon separation failure. Defendant forcefully denies
24 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
25 applicable employment laws and raised several other significant defenses to Plaintiff's claims, including
26 but not limited to, facially compliant meal and rest period policies, written policies requiring all loss
27

1 prevention security checks to take place while on-the-clock, compliant wage statements, and timely
2 paid all wages due upon separation of employment.

3 13. On October 22, 2020, Plaintiff served Defendant and the Labor and Workforce
4 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA
5 Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions
6 of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and
7 of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
8 Code Sections 2698 et seq (“PAGA”).

9 14. On February 26, 2021, Plaintiff filed a class action complaint in the Ventura Superior
10 Court, Case Number 34-2021-00295429 (“Class Action”). The Class Action alleged eight causes of
11 action against Defendant for: (1) Unfair Competition in Violation of California Business and
12 Professions Code §§ 17200; (2) Failure to Pay Overtime Wages in Violation of California Labor Code
13 §§ 510 *et seq.*; (3) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197
14 and 1197.1; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and
15 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6)
16 Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure
17 to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Violation of
18 the Private Attorneys General Act [Labor Code section 2698]; and (9) Failure to reimburse for required
19 expenses in violation of California Labor Code section 2802 (“Class Claims”).

20 15. After the Action was commenced, the Parties agreed to mediate the Action. In
21 anticipation of mediation, the Parties agreed to stay additional formal discovery and continue deadlines
22 for class certification in the Actions. To prepare for mediation, the Parties agreed to informally produce
23 additional documents and data points subject to the mediation privilege, including but not limited to,
24 the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel
25 retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and
26 payroll data.

1 16. On September 17, 2021 the Parties participated in a full day mediation with mediator Jill
2 R. Sperber, Esq. After arms-length negotiations and bargaining, the Parties reached an agreement to
3 settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the
4 Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant
5 motion.

6 17. The Court preliminarily approved a Total Settlement Amount of \$130,000 based on a
7 total of approximately 5,500 Workweeks worked by the Class during the Class Period. The Total
8 Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class
9 Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA
10 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

11 18. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
12 the class and should be granted final approval. This is evidenced by the unanimous approval of the
13 Settlement by the Settlement Class and absence of any objections to the Settlement.

14 19. Further supporting final approval, the average Individual Settlement Payment of \$547.84
15 is comparable to settlement payments in similar wage and hour class actions. This result is particularly
16 favorable considering that liability and certification were far from certain. Given the complexities of
17 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
18 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
19 final approval.

20 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

21 **A. Adequate Investigation**

22 20. Months before filing any one of the Actions, Class Counsel began its pre-filing
23 investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy
24 interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to
25 her employment, including portions of Defendant's handbooks, compensation policies, and time and
26 payroll records. At the conclusion of the interview, Class Counsel determined that Plaintiff's
27 complaints justified further inquiry.

1 21. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In
2 response, Defendant produced hundreds of pages of documents, including but not limited, copies of
3 Plaintiff's hiring documents, payroll and time records, performance reviews and separation documents.
4 Class Counsel reviewed and analyzed the documents and determined the documents appeared to
5 substantiate Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked
6 and to provide compliant meal and rest periods.

7 22. Considering the many anticipated factual disputes, the Parties agreed, relatively early in
8 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
9 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and
10 Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant
11 produced the time and payroll records for the Class Members, aggregate workweek and pay period data
12 for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter*
13 *alia*, compensation, timekeeping and meal and rest period policies.

14 23. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
15 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
16 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
17 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
18 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

19 24. BCG analyzed Defendant's time and payroll data to assist in the development of various
20 damage models. Among other things, BCG determined the approximate number of work shifts,
21 workweeks, pay periods, average length of shift and average number of hours worked per week and pay
22 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and
23 rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the
24 amount of off-the-clock work performed by the Class Members during the Class Period.

25 25. In advance of mediation, BCG created a damage model predicated on the BCG analysis.
26 Class Counsel's models calculated Defendant's potential liability exposure while accounting for the
27
28

1 uncertainties of continued litigation. These damage model informed and guided Class Counsel during
2 the mediated settlement discussions.

3 26. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
4 determining Plaintiff's suitability as a putative class representative through interviews, background
5 investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims;
6 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
7 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
8 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
9 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
10 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
11 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
12 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
13 independent assessment of the reasonableness of the terms to which the Parties have agreed.

14 27. Class Counsel only agreed to enter the Settlement following his thorough investigation
15 and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and
16 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
17 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
18 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
19 reasonable, and adequate, the Court should preliminarily approve the Settlement

20 **B. The Parties Settled at Mediation**

21 28. The Settlement is the product of a mediation session with a respected mediator and
22 negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's
23 length and tempered by the efforts of both sides to serve the interests of their clients. The amount of
24 the service award was not negotiated until after the parties agreed to the Total Settlement Amount and
25 many other terms.

26
27 ///

1 **C. Class Counsel is Experienced in Similar Litigation**

2 29. Plaintiff is represented by competent and experienced counsel to pursue their claims. I
3 established the JCL Law Firm, APC (“Firm”), in 2010. The Firm is a boutique plaintiff firm representing
4 aggrieved employees and consumers throughout California in wage and hour class actions and complex
5 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,
6 Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Sydney Castillo-Johnson (Associate
7 Attorney), Tesla Stone (Paralegal), Jennifer Heming (Legal Secretary), Perssia Razma (Law Clerk),
8 Sara Christensen (Legal Assistant).

9 30. I am qualified to represent the Plaintiffs, the State of California and the Aggrieved
10 Employees. I have extensive experience with wage and hour class and representative actions litigation
11 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
12 litigation experience and complex construction product liability experience. I can, will and have
13 adequately represented the interests of the Plaintiffs, the State of California and the Aggrieved
14 Employees throughout this action.

15 31. I have represented consumers and employees in California class actions, and complex
16 multi-party product liability actions exclusively for more than 13 years. I have been in practice as a
17 plaintiffs’ civil litigation attorney since April 2007.

18 32. I have significant class counsel and collective action counsel experience. I served as class
19 and/or collective (PAGA) counsel in the following matters:

20 a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No.
21 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar
22 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The
23 Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA
24 counsel for the State of California.

25 b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914
26 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA
27 settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC
28

acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action settlement.)

e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).

g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

- i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

1 p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of
2 California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
3 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as
4 Class Counsel.)

5 q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court
6 Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law
7 Firm, APC, as Class Counsel and granted final approval for an unlawful housing class
8 action settlement arising out of Civil Code Section 1940.1.)

9 r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
10 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
11 class counsel and granted final approval of wage and hour class action for unpaid
12 overtime.)

13 s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
14 No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm,
15 APC, as Class Counsel and granted preliminary approval for the wage and hour class
16 action settlement involving nearly 900 current and former employees. Final approval
17 scheduled for October 4, 2019)

18 t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
19 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
20 as Class Counsel and granted final approval for a wage and hour class action settlement
21 for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

22 u. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-
23 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
24 APC, as Class Counsel and granted final approval for a wage and hour wage class action
25 settlement involving misclassified house cleaners.)
26
27
28

v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

1 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
2 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
3 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
4 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
5 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
6 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
7 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
8 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
9 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
10 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
11 certification of driver meal and rest period claims based on the predominance of individual issues).
12 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
13 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
14 settlement.

15 39. Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless
16 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
17 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
18 drastically affect the value of Plaintiffs’ claims and, in fact, already has. Recently, the California Court
19 of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue
20 the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security*
21 *Services, Inc.*, 40 Cal.App.5th 444 (2019) (*review granted*). The *Naranjo* decision gutted Plaintiffs’
22 claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties
23 predicated on rest period violations.

24 40. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O’Conner v. Uber*
25 *Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.
26 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little
27 doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to
28

1 post a bond and appeal. A post-judgment appeal by Defendant would have required many more years
2 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
3 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
4 outweigh an uncertain result three or more years in the future.

5 41. Class Representative and Class Counsel recognize the expense and length of a trial
6 against Defendant through possible appeals which could take another three years. In arriving at their
7 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
8 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
9 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in
10 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
11 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
12 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial
13 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative
14 and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest
15 of the Class, is fair, reasonable and adequate, and should be granted final approval. With respect to the
16 most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage
17 and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d
18 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an
19 employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in
20 favor of the employer. (*See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087
21 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National*
22 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class
23 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that
24 employees might not take their breaks were predominantly individualized questions of fact not
25 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
26 denial of certification because employees’ declarations attesting to having taken meal and rest breaks
27 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*

1 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
2 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
3 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
4 period claims based on the predominance of individual issues).) Collectively, the examples cited above
5 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification
6 through a contested motion is a significant risk factor favoring settlement.

7 **F. The Total Settlement Amount is Fair and Reasonable**

8 42. The Total Settlement Amount of \$130,000 in this case is fair and well within the range
9 of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement
10 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
11 various potential impediments to recovery. Class Counsel developed varied economic damages models
12 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
13 The various models were informed by Class Counsel's investigation, including the analysis of a
14 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
15 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
16 behalf of the Settlement Class. The Total Settlement Amount represents approximately 20% of the
17 class-wide verdict value of the claims being released and between
18 8% and 12% of the full verdict value of class and PAGA claims.

19 43. Clearly the goal of this litigation to obtain redress for the class has been met by this
20 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
21 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
22 approval.

23 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

24 44. Here, Plaintiffs and Defendant negotiated a good faith PAGA Settlement in the amount
25 of \$5,000 which is 3.8% of the Total Settlement Amount. This amount falls well within the range of
26 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$3,750) will be
27 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed

1 to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and
2 should be approved.

3 45. Further, on December 20, 2021, Class Counsel gave the LWDA notice of this Settlement
4 and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval
5 with the LWDA. On June 6, 2022, Plaintiff gave the LWDA notice of this motion seeking final approval
6 of this settlement.

7 I declare under the penalty of perjury under the laws of the State of California that the foregoing
8 is true and correct. Executed this 6th day of June 2022, at San Diego, California.

9
10 **JCL LAW FIRM, APC**

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

COURTENAY ARNESON, an individual,
on behalf of herself and on behalf of all
persons similarly situated,

PLAINTIFF,

vs.

BAHN THAI, Inc. (dba Thai Basil Café /
Veg Café & Bar), a California Corporation;
and DOES 1 through 50, Inclusive;
DEFENDANTS.

Case No. 34-2021-00295429

[Action Filed 02/26/2021]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION CLAIMS AND
RELEASE OF CLAIMS**

Judge: Honorable Kevin R. Culhane
Dept.: 37

{3282393.DOCX:}

STIPULATION OF SETTLEMENT OF CLASS ACTION AND RELEASE OF CLAIMS

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between plaintiff COURTENAY ARNESON (hereinafter “Plaintiff”), individually and on behalf of the putative class and the State of California as a private attorney general, and defendant BAHN THAI, Inc., (dba Thai Basil Café / Veg Café & Bar), a California Corporation (hereinafter “Defendant”):

I. DEFINITIONS

- A. “Action” shall mean the putative class action lawsuit designated *Arneson v. Bahn Thai, Inc. (dba Thai Basil Café / Veg Café & Bar)*, Sacramento County Superior Court, Case No. 34-2021-00295429, filed February 26, 2021 (hereinafter “the Action”)
- B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Shani Zakay of Zakay Law Group, APLC.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Actions, consisting of attorneys’ fees currently not to exceed one-third of the Total Settlement Amount currently estimated to be \$43,333 out of \$130,000 plus costs and expenses in the amount of \$9,000. Class Counsel’s award for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).
- F. “Class Data” means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class

1 Member's full name; last known address; Social Security Number; start dates and end
2 dates of employment.

3 G. "Class Members" or the "Class" means all non-exempt employees who are or
4 previously were employed by Defendant in California during the Class Period.

5 H. "Class Period" means the period between February 26, 2017 to September 17, 2021.

6 I. "Class Representative Service Award" means the amount that the Court authorizes to
7 be paid to the Class Representative, in addition to her Individual Settlement Payment
8 and her pro-rata share of the PAGA Settlement, in recognition of her efforts and risks
9 in assisting with the prosecution of the Actions and in exchange for executing a
10 General Release of Defendant.

11 J. "Class Representative" shall mean plaintiff COURTENAY ARNESON.

12 K. "Court" means the Superior Court for the State of California, County of Sacramento
13 currently presiding over the Action.

14 L. "Defendant" shall mean Bahn Thai, Inc. (dba Thai Basil Café / Veg Café & Bar) a
15 California Corporation.

16 M. "Effective Date" means the earliest date, following entry by the Court of an order
17 and judgment finally approving this Settlement, upon which one of the following have
18 occurred: (i) if no objection is filed to the settlement and no objector appears at the
19 hearing on final approval, the date of the Court's entry of the order granting final
20 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
21 hearing on final approval, then the earlier of the following: (a) the expiration of all
22 potential appeal periods without a filing of a notice of appeal of the final approval
23 order or judgment; (b) final affirmance of the final approval order and judgment by
24 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
25 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
26 the final approval order and judgment is no longer subject to further judicial review.

- 1 N. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
2 is the date Defendant transfers the Total Settlement Amount into the QSF in accord
3 with the terms of this Agreement.
- 4 O. "Individual Settlement Payment" means the amount payable from the Net Settlement
5 Amount to each Settlement Class Member and excludes any amounts distributed to
6 Aggrieved Employees pursuant to PAGA.
- 7 P. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
8 Counsel Award, Class Representative Service Award, PAGA Settlement, and
9 Settlement Administration Costs.
- 10 Q. "Notice Packet" means the Class Notice to be provided to the Class Members by the
11 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
12 than formatting changes to facilitate printing by the Settlement Administrator).
- 13 R. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
14 Labor Code § 2698 *et seq.*
- 15 S. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period
16 for each Aggrieved Employee divided by the sum total of the pay periods for all
17 Aggrieved Employees during the PAGA Period.
- 18 T. "PAGA Period" means the period between October 22, 2019 until September 26,
19 2021 (the "PAGA Period").
- 20 U. "PAGA Settlement" shall mean Five Thousand Dollars (\$5,000) to be allocated from
21 the Total Settlement Amount.
- 22 V. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
23 Plaintiff or Defendant, individually.
- 24 W. "Class Payment Ratio" means the respective Workweeks for each Class Member
25 divided by the sum total Workweeks for all Class Members.
- 26 X. "Plaintiff" shall mean COURTENAY ARNESON.

- 1 Y. "QSF" means the Qualified Settlement Fund established, designated and maintained
2 by the Settlement Administrator to fund the Total Settlement Amount.
- 3 Z. "Released Class Claims" means all class claims alleged in the operative complaint
4 which occurred during the Class Period, and expressly excluding all other claims,
5 including claims for vested benefits, wrongful termination, unemployment insurance,
6 disability, social security, workers' compensation, and class claims outside of the
7 Class Period.
- 8 AA. "Released PAGA Claims" means all PAGA claims alleged in the operative complaint
9 and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period,
10 and expressly excluding all other claims, including claims vested benefits, unpaid
11 wages, wrongful termination, unemployment insurance, disability, social security,
12 workers' compensation, and PAGA claims outside the PAGA Period.
- 13 BB. "Released Party" shall mean Defendant.
- 14 CC. "Response Deadline" means the date forty-five (45) days after the Settlement
15 Administrator mails Notice Packets to Class Members and the last date on which
16 Class Members may submit requests for exclusion or objections to the Settlement.
- 17 DD. "Settlement" means the disposition of the Actions pursuant to this Agreement.
- 18 EE. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
19 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
20 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
21 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
22 of the Total Settlement Amount is deposited for the purpose of resolving the claims
23 of Settlement Class Members. The Settlement Administrator shall maintain the funds
24 until distribution in an account(s) segregated from the assets of Defendant and any
25 person related to Defendant. *All accrued interest shall be paid and distributed to the*
26 *Settlement Class Members as part of their respective Individual Settlement*
27 *Payment.*

1 FF. "Settlement Class Members" or "Settlement Class" means all Class Members who
2 have not submitted a timely and valid request for exclusion as provided in this
3 Agreement.

4 GG. "Total Settlement Amount" means One Hundred Thirty Thousand Dollars
5 (\$130,000.00) that Defendant must pay into the QSF in connection with this
6 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
7 Representative Service Award, the Class Counsel Award, PAGA Settlement and the
8 Settlement Administration Costs and *exclusive* of the employer's share of payroll tax,
9 if any, triggered by any payment under this Settlement.

10 HH. "Workweeks", for purposes of calculating the distribution of the Net Settlement
11 Amount, means the number of weeks of employment during the Class Period that
12 each Class Member was employed by Defendant in California, excluding weeks
13 during which the Class Member did not perform any work for Defendant.

14 II. "PAGA Pay Periods", for purposes of calculating the distribution of the Aggrieved
15 Employee Payment, as defined herein, means the number of pay periods of
16 employment during the PAGA Period that each Aggrieved Employee worked in
17 California.

18 **II. RECITALS**

19 A. On October 22, 2020, Plaintiff filed a Notice of Violations with the Labor and
20 Workforce Development Agency (LWDA) and served the same on Defendant.

21 B. On February 26, 2020, Plaintiff filed the Class Action lawsuit for:

- 22 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
- 23 2. Failure to pay minimum wages in violation of California Labor Code sections
24 1194, 1197 and 1197.1;
- 25 3. Failure to pay overtime wages in violation of California Labor Code sections
26 510 *et seq*;
- 27

1 4. Failure to provide required meal periods in violation of California Labor Code
2 sections 226.7 and 512 and the applicable IWC wage order;

3 5. Failure to provide required rest periods in violation of California Labor Code
4 sections 226.7 and 512 and the applicable IWC wage order;

5 6. Failure to provide accurate itemized wage statements in violation of California
6 Labor Code section 226;

7 7. Failure to provide wages when due in violation of California Labor Code
8 sections 201, 202 and 203;

9 8. Violation of the Private Attorneys General Act [Labor Code section 2698].

10 9. Failure to reimburse Plaintiff for required expenses in violation of California
11 Labor Code section 2802.

12 C. The Class Representative believes she has meritorious claims based on alleged
13 violations of the California Labor Code, and the Industrial Wage Commission
14 Orders, and that class certification is appropriate because the prerequisites for class
15 certification can be satisfied in the Action, and this action is manageable as a PAGA
16 representative action.

17 D. Defendant denies any liability or wrongdoing of any kind associated with the claims
18 alleged in the Action, disputes any wages, damages and penalties claimed by the
19 Class Representative are owed, and further contends that, for any purpose other than
20 settlement, the Action is not appropriate for class or representative action treatment.
21 Defendant contends, among other things, that at all times they complied with the
22 California Labor Code and the Industrial Wage Commission Orders.

23 E. The Class Representative is represented by Class Counsel. Class Counsel conducted
24 an investigation into the facts relevant to the Action, including conducting an
25 independent investigation as to the allegations, reviewing documents and
26 information exchanged through informal discovery, and reviewing documents and
27 information provided by Defendant pursuant to informal requests for information to
28

1 prepare for mediation. Defendant produced for the purpose of settlement
2 negotiations certain employment data concerning the Settlement Class, which Class
3 Counsel reviewed and analyzed. Based on their own independent investigation and
4 evaluation, Class Counsel are of the opinion that the Settlement with Defendant is
5 fair, reasonable and adequate, and is in the best interest of the Settlement Class in
6 light of all known facts and circumstances, including the risks of significant delay,
7 defenses asserted by Defendant, uncertainties regarding class certification, and
8 numerous potential appellate issues. Although it denies any liability, Defendant is
9 agreeing to this Settlement solely to avoid the inconveniences and cost of further
10 litigation. The Parties and their counsel have agreed to settle the claims on the terms
11 set forth in this Agreement.

12 F. On September 17, 2021, the Parties participated in mediation presided over by Jill
13 R. Sperber, an experienced mediator of wage and hour class actions. The mediation
14 concluded with a settlement after both sides agreed to a Mediator's proposal which
15 was subsequently memorialized in the form of a Memorandum of Understanding
16 ("MOU").

17 G. This Agreement replaces and supersedes the MOU and any other agreements,
18 understandings, or representations between the Parties. This Agreement represents
19 a compromise and settlement of highly disputed claims. Nothing in this Agreement
20 is intended or will be construed as an admission by Defendant that the claims in the
21 Actions of Plaintiff or the Class Members have merit or that Defendant bears any
22 liability to Plaintiff or the Class on those claims or any other claims, or as an
23 admission by Plaintiff that Defendant's defenses in the Actions have merit.

24 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
25 Settlement was arrived at through arm's-length negotiations, taking into account all
26 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
27 attendant to continuing the Action through trial and any appeal. Accordingly, the

Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

- I. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Consideration. In full and complete settlement of the Actions, and in exchange for the releases set forth below, Defendant and the Released Parties will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, equal to the Total Settlement Amount of One Hundred Thirty Thousand Dollars (\$130,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Total Settlement Amount shall revert to Defendant. Other than the Defendant's share of employer payroll taxes, Defendant shall not be required to pay more than the Total Settlement Amount, except as provided for hereinbelow.
2. Class Size. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 110 individuals who collectively worked approximately 5,500 Workweeks ("Projected Workweeks") during the Class Period. In regard hereto, Defendant will provide a declaration under penalty of perjury confirming the number of Class Members and Workweeks they worked during the Class Period prior to the filing of the motion for preliminary approval. If the workweek numbers is greater than 105% of the workweek

1 estimate provided herein, the end date of the Release Period and Class Period
2 will be adjusted so that the number of workweeks in the Release Period and
3 Class Period does not exceed 105% of the estimate.

4 3. Settlement Payment. Defendant and the Released Parties, and each of them,
5 are jointly and severally liable for payment of the Total Settlement Amount.
6 Defendant shall pay the Total Settlement Amount to the Settlement
7 Administrator on the Funding Date.

8 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
9 payroll taxes is in addition to the Total Settlement Amount and shall be paid
10 together with the Total Settlement Amount.

11 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
12 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
13 release the Released Parties from the Released Class Claims for the Class Period.

14 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
15 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
16 California release the Released Parties from the PAGA Released Claims for the PAGA
17 Period.

18 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
19 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the
20 Released Parties from any and all claims, whether known or unknown, which exist or
21 may exist on her behalf as of the date of this Agreement, including but not limited to
22 any and all tort claims, contract claims, wage claims, wrongful termination claims,
23 disability claims, benefit claims, public policy claims, retaliation claims, statutory
24 claims, personal injury claims, emotional distress claims, invasion of privacy claims,
25 defamation claims, fraud claims, quantum meruit claims, and any and all claims
26 arising under any federal, state or other governmental statute, law, regulation or
27 ordinance, including, but not limited to claims for violation of the Fair Labor

Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims, rights or benefits that she may have under California Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters

1 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
2 discover facts different from or in addition to those Plaintiff now knows or believes to
3 be true regarding the matters released or described in this Settlement Agreement, and
4 even so Plaintiff agrees that the releases and agreements contained in this Settlement
5 Agreement shall remain effective in all respects notwithstanding any later discovery
6 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
7 mistake in connection with the true facts involved in the matters, disputes, or
8 controversies released or described in this Settlement Agreement or with regard to any
9 facts now unknown to Plaintiff relating thereto.

10 E. Conditions Precedent: This Settlement will become final and effective only upon the
11 occurrence of all of the following events:

- 12 1. The Court enters an order granting preliminary approval of the Settlement;
- 13 2. The Court enters an order granting final approval of the Settlement and a Final
14 Judgment;
- 15 3. If an objector appears at the final approval hearing, the time for appeal of the
16 Final Judgment and Order Granting Final Approval of Class Action
17 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
18 any appeal from the Judgment and Order Granting Final Approval of Class
19 Action Settlement; and
- 20 4. Defendant fully funds the Total Settlement Amount.

21 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
22 not preliminarily or finally approved by the Court, fails to become effective, or is
23 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
24 Defendant from obtaining a complete resolution of the Released Claims, or if
25 Defendant fails to fully fund the Total Settlement Amount:

- 26 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
27 and shall not be admissible in any judicial, administrative or arbitral

proceeding for any purpose or with respect to any issue, substantive or procedural;

2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Actions, including with respect to the issue of class certification.

4. If Defendant fails to fully fund the Total Settlement Amount, Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred to the date of nullification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA

1 Settlement described and will be solely responsible for any penalties or other
2 obligations resulting from their personal tax reporting of Individual Settlement
3 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

4 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
5 the "acknowledging party" and each Party to this Agreement other than the
6 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
7 of this Agreement, and no written communication or disclosure between or among the
8 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
9 such communication or disclosure constitute or be construed or be relied upon as, tax
10 advice within the meaning of United States Treasury Department circular 230 (31 CFR
11 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
12 her or its own, independent legal and tax counsel for advice (including tax advice) in
13 connection with this Agreement, (b) has not entered into this Agreement based upon
14 the recommendation of any other Party or any attorney or advisor to any other Party,
15 and (c) is not entitled to rely upon any communication or disclosure by any attorney
16 or adviser to any other party to avoid any tax penalty that may be imposed on the
17 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
18 any limitation that protects the confidentiality of any such attorney's or adviser's tax
19 strategies (regardless of whether such limitation is legally binding) upon disclosure by
20 the acknowledging party of the tax treatment or tax structure of any transaction,
21 including any transaction contemplated by this Agreement.

22 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
23 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
24 which shall include this Settlement Agreement. Plaintiff will provide Defendant with
25 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
26 Defendant an opportunity to propose changes or additions to the Motion.

1 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
2 establishing and administering the QSF; calculating, processing and mailing payments
3 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
4 mailing the Notice Packets to the Class Members as directed by the Court; receiving
5 and reporting the objections and requests for exclusion; calculating, deducting and
6 remitting all legally required taxes from Individual Settlement Payments and
7 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
8 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
9 Settlement; processing and mailing tax payments to the appropriate state and federal
10 taxing authorities; providing declaration(s) as necessary in support of preliminary
11 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
12 or the Court orders the Settlement Administrator to perform. The Settlement
13 Administrator shall keep the Parties timely apprised of the performance of all
14 Settlement Administrator responsibilities by among other things, sending a weekly
15 status report to the Parties' counsel stating the date of the mailing, the of number of
16 Elections Not to Participate in Settlement it receives (including the numbers of valid
17 and deficient), and number of objections received.

18 L. Notice Procedure.

19 1. Class Data. No later than ten (10) business days after the Preliminary
20 Approval Date, Defendant shall provide the Settlement Administrator with the
21 Class Data for purposes of preparing and mailing Notice Packets to the Class
22 Members.

23 2. Notice Packets.

24 a) The Notice Packet shall contain the Notice of Class Action Settlement
25 in a form substantially similar to the form attached as Exhibit A. The
26 Notice of Class Action Settlement shall inform Class Members and
27 Aggrieved Employees that they need not do anything in order to

1 receive an Individual Settlement Payment and/or Aggrieved
2 Employees' individual shares of the PAGA Settlement and to keep the
3 Settlement Administrator apprised of their current mailing address, to
4 which the Individual Settlement Payments and/or Aggrieved
5 Employees' individual shares of the PAGA Settlement will be mailed
6 following the Funding Date. The Notice of Class Action Settlement
7 shall set forth the release to be given by all members of the Class who
8 do not request to be excluded from the Settlement Class and/or
9 Aggrieved Employees' in exchange for an Individual Settlement
10 Payment and/or Aggrieved Employees' individual shares of the PAGA
11 Settlement, the number of Workweeks worked by each Class Member
12 during the Class Period and PAGA Period, if any, and the estimated
13 amount of their Individual Settlement Payment if they do not request
14 to be excluded from the Settlement and each Aggrieved Employee's
15 share of the PAGA Settlement, if any. The Settlement Administrator
16 shall use the Class Data to determine Class Members' Workweeks and
17 PAGA Workweeks. The Notice will also advise the Aggrieved
18 Employees that they will release the Released PAGA Claims and will
19 receive their share of the PAGA Settlement regardless of whether they
20 request to be excluded from the Settlement.

- 21 b) The Notice Packet's mailing envelope shall include the following
22 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
23 ENTITLED TO PARTICIPATE IN A CLASS ACTION
24 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
25 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
26 NOTICE."

1 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
2 the Settlement Administrator will perform a search based on the National
3 Change of Address Database to update and correct any known or identifiable
4 address changes. No later than fourteen (14) calendar days after receiving the
5 Class Data from Defendant, the Settlement Administrator shall mail and email
6 copies of the Notice Packet to all Class Members via regular First-Class U.S.
7 Mail and electronic mail. The Settlement Administrator shall exercise its best
8 judgment to determine the current mailing address for each Class Member.
9 The address identified by the Settlement Administrator as the current mailing
10 address shall be presumed to be the best mailing address for each Class
11 Member.

12 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
13 Administrator as non-delivered on or before the Response Deadline shall be
14 re-mailed to any forwarding address provided. If no forwarding address is
15 provided, the Settlement Administrator shall promptly attempt to determine a
16 correct address by lawful use of skip-tracing, or other search using the name,
17 address and/or Social Security number of the Class Member involved, and
18 shall then perform a re-mailing, if another mailing address is identified by the
19 Settlement Administrator. In addition, if any Notice Packets, which are
20 addressed to Class Members who are currently employed by Defendant, are
21 returned to the Settlement Administrator as non-delivered and no forwarding
22 address is provided, the Settlement Administrator shall notify Defendant.
23 Defendant will request that the currently employed Class Member provide a
24 corrected address, and transmit to the Administrator any corrected address
25 provided by the Class Member. Class Members who received a re-mailed
26 Notice Packet shall have their Response Deadline extended fifteen (15) days
27 from the original Response Deadline.

1 5. Disputes Regarding Individual Settlement Payments. Class Members will
2 have the opportunity, should they disagree with Defendant's records regarding
3 the start and end dates of employment to provide documentation and/or an
4 explanation to show contrary dates. If there is a dispute, the Settlement
5 Administrator will consult with the Parties to determine whether an
6 adjustment is warranted. The Settlement Administrator shall determine the
7 eligibility for, and the amounts of, any Individual Settlement Payments under
8 the terms of this Agreement. The Settlement Administrator's determination
9 of the eligibility for and amount of any Individual Settlement Payment shall
10 be binding upon the Class Member and the Parties.

11 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
12 by the Settlement Administrator concerning the administration of the
13 Settlement will be resolved by the Court under the laws of the State of
14 California. Before any such involvement of the Court, counsel for the Parties
15 will confer in good faith to resolve the disputes without the necessity of
16 involving the Court.

17 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
18 Packet shall state that Class Members who wish to exclude themselves from
19 the Settlement must submit a written request for exclusion by the Response
20 Deadline. The written request for exclusion must state that the Class Member
21 wishes to exclude himself or herself from the Settlement and (1) must contain
22 the name, address, and the last four digits of the Social Security number of the
23 person requesting exclusion; (2) must be signed by the Class Member; (3)
24 must be postmarked or fax stamped by the Response Deadline and returned to
25 the Settlement Administrator at the specified address or fax telephone number;
26 and (4) contain a typewritten or handwritten notice stating in substance: "I
27 wish to opt out of the settlement of the class action lawsuit entitled *Arneson*

1 *v. Bahn Thai, Inc.*, currently pending in the Superior Court for the County of
2 Sacramento, Case No. 34-2021-00295429 . I understand that by requesting to
3 be excluded from the settlement, I will receive no money from the Settlement
4 described in this Notice.” The request for exclusion will not be valid if it is
5 not timely submitted, if it is not signed by the Class Member, or if it does not
6 contain the name and address and last four digits of the Social Security number
7 of the Class Member. The date of the postmark on the mailing envelope or
8 fax stamp on the request for exclusion shall be the exclusive means used to
9 determine whether the request for exclusion was timely submitted. Any Class
10 Member who requests to be excluded from the Settlement Class will not be
11 entitled to an Individual Settlement Payment and will not be otherwise bound
12 by the terms of the Settlement or have any right to object, appeal or comment
13 thereon. However, any Class Member that submits a timely request for
14 exclusion that is also a member of the Aggrieved Employees will still receive
15 his/her pro rata share of the PAGA Settlement, as specified below, and in
16 consideration, will be bound by the Release by the Aggrieved Employees as
17 set forth herein. Settlement Class Members who fail to submit a valid and
18 timely written request for exclusion on or before the Response Deadline shall
19 be bound by all terms of the Settlement and any final judgment entered in this
20 Action if the Settlement is approved by the Court. No later than fourteen (14)
21 calendar days after the Response Deadline, the Settlement Administrator shall
22 provide counsel for the Parties with a final list of the Class Members who have
23 timely submitted written requests for exclusion. At no time shall any of the
24 Parties or their counsel seek to solicit or otherwise encourage members of the
25 Class to submit requests for exclusion from the Settlement.

- 26 8. Objections. The Notice of Class Action Settlement contained in the Notice
27 Packet shall state that Class Members who wish to object to the Settlement

1 may submit to the Settlement Administrator a written statement of objection
2 (“Notice of Objection”) by the Response Deadline. The postmark date of
3 mailing shall be deemed the exclusive means for determining that a Notice of
4 Objection was served timely. The Notice of Objection must be signed by the
5 Settlement Class Member and state: (1) the case name and number; (2) the
6 name of the Settlement Class Member; (3) the address of the Settlement Class
7 Member; (4) the last four digits of the Settlement Class Member’s Social
8 Security number; (4) the basis for the objection; and (5) if the Settlement Class
9 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
10 Class Members who fail to make objections in writing in the manner specified
11 above may still make their objections orally at the Final Approval/Settlement
12 Fairness Hearing with the Court’s permission. Settlement Class Members will
13 have a right to appear at the Final Approval/Settlement Fairness Hearing to
14 have their objections heard by the Court. At no time shall any of the Parties
15 or their counsel seek to solicit or otherwise encourage Class Members to file
16 or serve written objections to the Settlement or appeal from the Order and
17 Final Judgment. Class Members who submit a written request for exclusion
18 may not object to the Settlement. Class Members may not object to the PAGA
19 Settlement

20 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
21 the Total Settlement Amount on or before the Funding Date, plus any employer’s share
22 of payroll taxes as mandated by law within the time specified herein.

23 1. Individual Settlement Payments. Individual Settlement Payments shall be
24 paid from the Net Settlement Amount and shall be paid pursuant to the
25 formula set forth herein. Using the Class Data, the Settlement Administrator
26 shall add up the total number of Workweeks for all Class Members. The
27 respective Workweeks for each Class Member will be divided by the total

1 Workweeks for all Class Members, resulting in the Payment Ratio for each
2 Class Member. Each Class Member's Payment Ratio will then be multiplied
3 by the Net Settlement Amount to calculate each Class Member's estimated
4 Individual Settlement Payments. Each Individual Settlement Payment will be
5 reduced by any legally mandated employee tax withholdings (e.g., employee
6 payroll taxes, etc.). Individual Settlement Payments for Class Members who
7 submit valid and timely requests for exclusion will be redistributed to
8 Settlement Class Members who do not submit valid and timely requests for
9 exclusion on a pro rata basis based on their respective Payment Ratios.

10 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
11 Class Data, the Settlement Administrator shall add up the total number of
12 PAGA pay periods for all Aggrieved Employees during the PAGA Period.
13 The respective PAGA pay periods for each Aggrieved Employee will be
14 divided by the total PAGA pay periods for all Aggrieved Employees, resulting
15 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
16 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
17 Aggrieved Employee Payment to calculate each Aggrieved Employee's
18 estimated share of the PAGA Settlement.

19 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
20 Settlement Payments shall be allocated and treated as follows: 15% as wages
21 ("Wage Portion"); 85% as penalties and interest ("Non-Wage Portion"). The
22 Wage Portion is subject to wage withholdings and shall be reported on IRS
23 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
24 and shall be reported on IRS Form 1099.

25 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
26 Employee Settlement Payments shall be allocated and treated as 100%
27 penalties and shall be reported on IRS Form 1099.

1 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
2 individual shares of the PAGA Settlement made to Settlement Class Members
3 and/or Aggrieved Employees under this Settlement Agreement, as well as any
4 other payments made pursuant to this Settlement Agreement, will not be
5 utilized to calculate any additional benefits under any benefit plans to which
6 any Class Members may be eligible, including, but not limited to profit-
7 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
8 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
9 Parties' intention that this Settlement Agreement will not affect any rights,
10 contributions, or amounts to which any Class Members may be entitled under
11 any benefit plans.

12 6. All monies received by Settlement Class Members under the Settlement which
13 are attributable to wages shall constitute income to such Settlement Class
14 Members solely in the year in which such monies actually are received by the
15 Settlement Class Members. It is the intent of the Parties that Individual
16 Settlement Payments and individual shares of the PAGA Settlement provided
17 for in this Settlement agreement are the sole payments to be made by Defendant
18 to Settlement Class Members and/or Aggrieved Employees in connection with
19 this Settlement Agreement, with the exception of Plaintiff, and that the
20 Settlement Class Members and/or Aggrieved Employees are not entitled to any
21 new or additional compensation or benefits as a result of having received the
22 Individual Settlement Payments and/or their shares of the PAGA Settlement.

23 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
24 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
25 and/or Aggrieved Employees last known mailing address no later than fifteen
26 (15) calendar days after the Funding Date.

1 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
2 Employees shall remain valid and negotiable for one hundred and eighty (180)
3 days from the date of their issuance. If a Settlement Class Member and/or
4 Aggrieved Employee does not cash his or her settlement check within 90 days,
5 the Settlement Administrator will send a letter to such persons, advising that
6 the check will expire after the 180th day, and invite that Settlement Class
7 Member and/or Aggrieved Employee to request reissuance in the event the
8 check was destroyed, lost or misplaced. In the event an Individual Settlement
9 Payment and/or Aggrieved Employee's individual share of the PAGA
10 Settlement check has not been cashed within one hundred and eighty (180)
11 days, all funds represented by such uncashed checks, plus any interest accrued
12 thereon, shall be distributed consistent with California Code of Civil
13 Procedure Section 384 as follows: to The Children's Advocacy Institute
14 (CAI), founded at the nonprofit University of San Diego School of Law in
15 1989. Class Counsel ,Defendant's counsel, nor any of the Parties, have any
16 interest, pecuniary or otherwise, in CAI.

17 9. Class Representative Service Award. In addition to the Individual Settlement
18 Payment and her individual share of the PAGA Settlement to be paid to
19 Plaintiff, Plaintiff will apply to the Court for an award of not more than
20 \$7,500, as the Class Representative Service Award. Defendant does not
21 presently intend to oppose a Class Representative Service Award of not more
22 than \$7,500 for Plaintiff. The Settlement Administrator shall pay the Class
23 Representative Service Award, either in the amount stated herein if approved
24 by the Court or some other amount as approved by the Court, to Plaintiff from
25 the Total Settlement Amount no later than ten (10) calendar days after the
26 Funding Date. Any portion of the requested Class Representative Service
27 Award that are not awarded to the Class Representative shall be part of the

1 Net Settlement Amount and shall be distributed to Settlement Class Members
2 as provided in this Agreement. The Settlement Administrator shall issue an
3 IRS Form 1099 — MISC to Plaintiff for her Class Representative Service
4 Award. Plaintiff shall be solely and legally responsible to pay any and all
5 applicable taxes on her Class Representative Service Award and shall hold
6 harmless the Released Parties from any claim or liability for taxes, penalties,
7 or interest arising as a result of the Class Representative Service Award. The
8 Class Representative Service Award shall be in addition to Plaintiff's
9 Individual Settlement Payment as a Settlement Class Member. Approval of
10 this Settlement shall not be conditioned on Court approval of the requested
11 amount of the Class Representative Service Award. In the event that the Court
12 reduces or does not approve the requested Class Representative Service
13 Award, Plaintiff shall not have the right to revoke the Settlement, and it will
14 remain binding.

- 15 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
16 attorneys' fees not to exceed one-third of the Total Settlement Amount
17 currently estimated to be \$43,333 plus costs and expenses supported by
18 declaration not to exceed Nine Thousand Dollars (\$9,000), from the Total
19 Settlement Amount will be filed. Any portion of the requested Class Counsel
20 Award that is not awarded to Class Counsel shall be part of the Net Settlement
21 Amount and shall be distributed to Settlement Class Members as provided in
22 this Agreement. The Settlement Administrator shall allocate and pay the
23 Class Counsel Award to Class Counsel from the Total Settlement Amount no
24 later than five (5) calendar days after the Funding Date. Class Counsel shall
25 be solely and legally responsible to pay all applicable taxes on the payment
26 made pursuant to this paragraph. The Settlement Administrator shall issue an
27 IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to

1 this paragraph. In the event that the Court reduces or does not approve the
2 requested Class Counsel Award, Plaintiff and Class Counsel shall not have
3 the right to revoke the Settlement, or to appeal such order, and the Settlement
4 will remain binding.

5 11. PAGA Settlement. Five Thousand Dollars (\$5,000) shall be allocated from
6 the Total Settlement Amount for settlement of claims for civil penalties under
7 the Private Attorneys General Act of 2004 ("PAGA Settlement"). The
8 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
9 Settlement (\$3,750) to the California Labor and Workforce Development
10 Agency no later than twenty-five (25) calendar days after the Funding Date
11 (hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA
12 Settlement (\$1,250) will be distributed to the Aggrieved Employees as
13 described in this Agreement (hereinafter "Aggrieved Employee Payment").
14 For purposes of distributing the PAGA Settlement to the Aggrieved
15 Employees, each Aggrieved Employee shall receive their pro-rata share of the
16 Aggrieved Employee Payment using the PAGA Payment Ratio as defined
17 above.

18 12. Settlement Administration Costs. The Settlement Administrator shall be paid
19 for the costs of administration of the Settlement from the Total Settlement
20 Amount. The estimate of the Settlement Administration Costs is \$6,000. The
21 Settlement Administrator shall be paid the Settlement Administration Costs
22 no later than twenty-five (25) calendar days after the Funding Date.

23 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
24 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
25 twenty-eight (28) days following the expiration of the Response Deadline, which
26 motion shall request final approval of the Settlement and a determination of the
27 amounts payable for the Class Representative Service Award, the Class Counsel

Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will provide Defendant with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion

1. Declaration by Settlement Administrator. No later than fourteen (14) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.
2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendant to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

O. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

- 1 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
2 except such proceedings necessary to implement and complete the Settlement, pending
3 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
- 4 Q. Amendment or Modification. This Agreement may be amended or modified only by
5 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 6 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
7 Agreement among these Parties, and no oral or written representations, warranties or
8 inducements have been made to any Party concerning this Agreement or its Exhibit
9 other than the representations, warranties and covenants contained and memorialized
10 in this Agreement and its Exhibit.
- 11 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Agreement and to take all appropriate Action required or permitted to be taken by
14 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
15 documents required to effectuate the terms of this Agreement. The persons signing
16 this Agreement on behalf of Defendant represents and warrants that he/she is
17 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
18 warrants that she is authorized to sign this Agreement and that she has not assigned
19 any claim, or part of a claim, covered by this Settlement to a third-party.
- 20 T. No Public Comment: The Parties and their counsel agree that they will not issue any
21 press releases, initiate any contact with the press, respond to any press inquiry, or have
22 any communication with the press about the fact, amount or terms of the Settlement
23 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
24 of its terms for any marketing or promotional purposes. Nothing herein will restrict
25 Class Counsel from including publicly available information regarding this settlement
26 in future judicial submissions regarding Class Counsel's qualifications and experience.
27 Further, Class Counsel will not include, reference or use the Settlement Agreement for

any marketing or promotional purposes, either before or after the Motion for Preliminary Approval is filed.

U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California.

W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement and all orders and judgments entered in connection with this Agreement.

Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant,

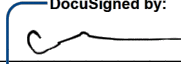
1 regardless of whether Class Counsel is currently aware of any facts or legal theories
2 upon which any claims or causes of action could be brought against Released Parties,
3 including those facts or legal theories alleged in the operative complaint in this Action.
4 The Parties further acknowledge, understand and agree that this representation is
5 essential to the Agreement and that this Agreement would not have been entered into
6 were it not for this representation.

7 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
8 certification for purposes of this settlement only.

9 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
10 Released Claims have merit and give rise to liability on the part of Defendant.
11 Defendant claims that the Released Claims have no merit and do not give rise to
12 liability. This Agreement is a compromise of disputed claims. Nothing contained in
13 this Agreement and no documents referred to and no action taken to carry out this
14 Agreement may be construed or used as an admission by or against the Defendant or
15 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
16 than as may be specifically set forth herein, each Party shall be responsible for and
17 shall bear its/his own attorney's fees and costs.

18 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:
19

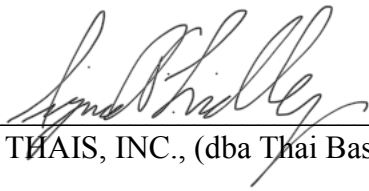
20 DATED: 11/1/2021
21 _____

DocuSigned by:


COURTENAY ARNESON

1 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

2
3 DATED: 10/29/2021


BAHN THAIS, INC., (dba Thai Basil Café / Veg Café
& Bar)

Sigmund F Lindley

Printed Name

CFO

Title

9
10 IT IS SO AGREED AS TO FORM BY COUNSEL:

11
12 DATED: _____

JCL LAW FIRM, A.P.C.

13 By: _____

14 Attorneys for Plaintiff and the Settlement Class
15 Members

16
17 DATED: _____

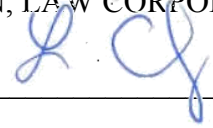
ZAKAY LAW GROUP, APLC

18 By: _____

19 Attorneys for Plaintiff and the Settlement Class
20 Members

21
22 DATED: October 28, 2021

23 LUKAS J. CLARY
24 KATIE A. COLLINS
25 WEINTRAUB TOBIN CHEDIAK COLEMAN &
26 GRODIN, LAW CORPORATION

27 By:  _____

Attorneys for Defendant

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: _____

BAHN THAIS, INC., (dba Thai Basil Café / Veg Café
& Bar)

Printed Name

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 11/1/2021 _____

JCL LAW FIRM, A.P.C.

By: _____

DocuSigned by:
Jean-Claude Lapuyade
0EBC25D5B9CD469...

Attorneys for Plaintiff and the Settlement Class
Members

DATED: 11/1/2021 _____

ZAKAY LAW GROUP, APLC

By: _____

DocuSigned by:
[Signature]
4ECDE73A91D4420...

Attorneys for Plaintiff and the Settlement Class
Members

DATED: _____

LUKAS J. CLARY
KATIE A. COLLINS
WEINTRAUB TOBIN CHEDIAK COLEMAN &
GRODIN, LAW CORPORATION

By: _____

Attorneys for Defendant

EXHIBIT B

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar # 290572)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.comegarcia@jcl-lawfirm.com**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)

Jackland Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.comjackland@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF SACRAMENTO**

COURTENAY ARNESON, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

BAHN THAI, INC. (dba Thai Basil Café /
Veg Café & Bar), a California Corporation;
and DOES 1-50, Inclusive,

Defendants.

Case No: 34-2021-00295429

**~~PROPOSED~~ PRELIMINARY
APPROVAL ORDER**

Hearing Date: January 11, 2022

Hearing Time: 1:30 p.m.

Reservation ID: 2602238

Judge: Shama H. Mesiwala

Dept.: 53

Trial Date: Not Set

Action Filed: February 26, 2021

~~PROPOSED~~ PRELIMINARY APPROVAL ORDER**Via Fax**

1 The Motion for Preliminary Approval of Class Action Settlement by Plaintiff Courtenay
2 Arneson ("Plaintiff") came on for hearing before this Court, the Honorable Shama H. Mesiwala
3 presiding. The Court, having considered the papers submitted in support of the motion,
4 **HEREBY ORDERS THE FOLLOWING:**

5 1. The Court preliminarily approves the Stipulation of Settlement of Class Action
6 Claims and Release of Claims ("Settlement Agreement" or "Agreement") a true and correct
7 copy of which is attached hereto as **Exhibit "1"**. This is based on the Court's determination
8 that the Settlement Agreement is within the range of possible final approval, pursuant to the
9 provisions of Section 382 of the California Code of Civil Procedure and California Rules of
10 Court, rule 3.769.

11 2. This Order incorporates by reference the definitions in the Agreement, and all
12 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

13 3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount
14 that Defendant shall pay is ONE HUNDRED THIRTY THOUSAND DOLLARS
15 (\$130,000.00). It appears to the Court on a preliminary basis that the settlement amount and
16 terms are fair, adequate, and reasonable as to the entire Settlement Class when balanced against
17 the probable outcome of further litigation relating to certification, liability, and damages issues.
18 It further appears that investigation and research have been conducted such that counsel for the
19 Parties are able to reasonably evaluate their respective positions. It further appears to the Court
20 that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid
21 the delay and risks that would be presented by the further prosecution of the litigation. It further
22 appears that the Settlement has been reached as the result of intensive, serious, and non-
23 collusive arms-length negotiations.

24 4. The Court preliminarily finds that the Settlement appears to be within the range of
25 reasonableness of a settlement that could ultimately be given final approval by this Court. The
26 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
27 preliminarily finds that the monetary settlement awards made available to the Settlement Class
28 are fair, adequate, and reasonable when balanced against the probable outcome of further

1 litigation relating to certification, liability, and damages issues.

2 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
3 certification of a class for settlement purposes only. This stipulation will not be deemed
4 admissible in this or any other proceeding should this Settlement not become final. For
5 settlement purposes only, the Court conditionally certifies the following Settlement Class:

6 "All non-exempt employees who are or previously were employed
7 by defendant BAHN THAI, INC. d.b.a. Thai Basil Café/Veg Café &
8 Bar) ("Defendant") in California during the period between February
9 26, 2017 and September 17, 2021 ("Class Period"). The Class
10 Members excludes any Class Member who submits a timely and
11 valid request for exclusion"

12 6. The Court concludes that, for settlement purposes only, the Settlement Class
13 meets the requirements for certification under section 382 of the California Code of Civil
14 Procedure in that: (a) the Settlement Class is ascertainable and so numerous that joinder of all
15 members of the Settlement Class is impracticable; (b) common questions of law and fact
16 predominate, and there is a well-defined community of interest amongst the Settlement Class
17 with respect to the subject matter of the litigation; (c) the claims of the Class Representative are
18 typical of the claims of the Settlement Class; (d) the Class Representative will fairly and
19 adequately protect the interests of the Settlement Class; (e) a class action is superior to other
20 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are
21 qualified to act as counsel for the Class Representative in their individual capacity and as the
22 representative of the Settlement Class Members.

23 7. The Court provisionally appoints plaintiff COURTENAY ARNESON as the
24 representative of the Settlement Class.

25 8. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law
26 Firm, A.P.C. and Shani Zakay of the Zakay Law Group, APLC, as Class Counsel for the
27 Settlement Class.

28 9. The Court hereby approves, as to form and content, the Proposed Notice of

1 Pendency of Class and Representative Action Settlement ("Class Notice") attached to the
2 Agreement as **Exhibit "A"**. The Court finds that both notices appear to fully and accurately
3 inform the Settlement Class and Aggrieved Employees of all material elements of the proposed
4 Settlement, including right of any Settlement Class member to be excluded from the Settlement
5 Class by submitting a written request for exclusion, and of each Settlement Class member's
6 right and opportunity to object to the Settlement. The Court further finds that the distribution of
7 the notices substantially in the manner and form set forth in the Agreement and this Order meets
8 the requirements of due process, is the most reasonable notice under the circumstances, and
9 shall constitute due and sufficient notice to all persons entitled thereto. The Court orders the
10 mailing of the notices by first class mail, pursuant to the terms set forth in the Agreement.

11 10. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator.
12 Within fourteen (14) calendar days of this order, Defendant shall provide, to the Settlement
13 Administrator the Class List, including information regarding Settlement Class Members that
14 Defendant will in good faith compile from their records, including each Settlement Class
15 Member's full name; last known address; Social Security Number; dates of employment, and
16 number of Workweeks accrued by each Settlement Class member during the Class Period and
17 the PAGA Period. Within fourteen (14) calendar days after receiving the Class List from
18 Defendant, the Settlement Administrator shall mail the Class Notice to all identified, potential
19 members of the Settlement Class via first class U.S. Mail using the most current mailing address
20 information available.

21 11. The Court hereby preliminarily approves the proposed procedure for exclusion
22 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
23 from the Settlement as provided in the Notice by following the instructions for requesting
24 exclusion from the Settlement of the Released Claims that are set forth in the Notice. All
25 requests for exclusion must be postmarked or received by the Response Deadline which is forty-
26 five (45) calendar days after the date the Class Notice is mailed to the Settlement Class
27 Members or, in the case of a re-mailed Notice, not more than fifteen (15) calendar days after the
28 original Response Deadline. Any such person who chooses to opt out of and be excluded from

1 the Settlement will not be entitled to an Individual Settlement Payment under the Settlement and
2 will not be bound by the Settlement, or have any right to object, appeal or comment thereon.
3 Settlement Class members who have not requested exclusion shall be bound by all
4 determinations of the Court, the Agreement and Judgment. A request for exclusion may only
5 opt out that particular individual, and any attempt to affect an opt-out of a group, class, or
6 subclass of individuals is not permitted and will be deemed invalid.

7
8 12. Any Settlement Class member who has not opted out may appear at the final
9 approval hearing and may object or express the Member's views regarding the Settlement and
10 may present evidence and file briefs or other papers that may be proper and relevant to the
11 issues to be heard and determined by the Court as provided in the Notice. Settlement Class
12 Members will have forty-five (45) days from the date the Settlement Administrator mails the
13 Class Notice to postmark their written objections to the Settlement Administrator.

14 13. The Agreement specifies for an award of Class Counsel Award for fees and
15 expenses that the Court authorizes to be paid to Class Counsel for the services they have
16 rendered to Plaintiff and the Class in this action, consisting of attorneys' fees not to exceed one-
17 third of the Total Settlement Amount currently estimated to be \$43,333.33 and costs and
18 expenses not to exceed \$9,500.00.

19 14. The Agreement also specifies a proposed Class Representative Service Award to
20 the Class Representative, Courtenay Arneson, in an amount not to exceed Seventy-Five
21 Hundred Dollars (\$7,500.00).

22 15. While the Class Counsel Award and the Class Representative Service Award
23 appear to be within the range of reasonableness, the Court will not approve the Class Counsel
24 Award or Class Representative Service Award until the Final Approval Hearing

25 16. A final approval hearing shall be held before this Court on 06/28/22 at 1:30 pm
26 AM in Department ⁵³ 6 of the Los Sacramento County Superior Court to determine all necessary
27 matters concerning the Settlement, including: whether the proposed settlement of the Action on
28 the terms and conditions provided for in the Agreement is fair, adequate and reasonable and
should be finally approved by the Court; whether an Order Granting Final Approval should be

1 entered herein; whether the plan of allocation contained in the Agreement should be approved
2 as fair, adequate and reasonable to the Settlement Class; and to finally approve the Class
3 Counsel Award, Class Representative Service Award, and the Settlement Administration Costs.
4 All papers in support of the motion for final approval and the motion for Attorneys' Fee and
5 Costs and Class Representative Enhancement Award shall be filed with the Court and served on
6 all counsel no later than sixteen (16) court days before the hearing.

7 17. Neither the Settlement nor any exhibit, document, or instrument delivered
8 thereunder shall be construed as a concession or admission by Defendant in any way, and shall
9 not be used as evidence of, or used against Defendant as, an admission or indication in any way,
10 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant
11 or with respect to the truth of any allegation asserted by any person. Whether or not the
12 Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement,
13 proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any
14 event be construed as, offered or admitted in evidence as, received as or deemed to be evidence
15 for any purpose adverse to the Defendant, including, but not limited to, evidence of a
16 presumption, concession, indication or admission by Defendant of any liability, fault,
17 wrongdoing, omission, concession or damage.

18 18. In the event the Settlement does not become effective in accordance with the
19 terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or
20 fails to become effective for any reason, this Order shall be rendered null and void and shall be
21 vacated, and the Parties shall revert to their respective positions as of before entering into the
22 Agreement. In such an event, the Court's orders regarding the Settlement, including this
23 Preliminary Approval Order, shall not be used or referred to in litigation for any purpose.
24 Nothing in this paragraph is intended to alter the terms of the Settlement Agreement with
25 respect to the effect of the Settlement Agreement if it is not approved.

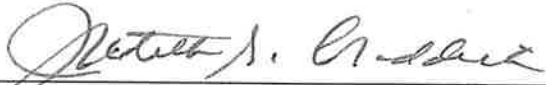
26 19. Pending final determination of whether the Settlement should be approved, Class
27 Representative and all members of the Settlement Class are barred and enjoined from filing,
28 commencing, prosecuting, intervening in, instigating or in any way participating in the

1 commencement or prosecution of any lawsuit, action or administrative, regulatory, arbitration or
2 other proceeding, in any forum, asserting any claims that are, or relate in any way to, the Class
3 Representative's Released Claims or the Settlement Class' Released Claims, unless and until
4 they submit a timely request for exclusion pursuant to the Agreement.

5 20. The Court reserves the right to adjourn or continue the date of the final approval
6 hearing and all dates provided for in the Agreement without further notice to Settlement Class
7 and retains jurisdiction to consider all further applications arising out of or connected with the
8 proposed Settlement.

9 **IT IS SO ORDERED.**

10
11 Dated: 1-27-24


JUDGE, SUPERIOR COURT OF
CALIFORNIA, COUNTY OF SACRAMENTO

Judith S. Craddick

SIGNATURE PURSUANT
TO CCP 635

EXHIBIT C