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FILED
Superior Court of California
County of Alameda

09/15/2022

Clad Flake, Executive Officer/Clerk of the Court

By: A. Ampomah Deputy
A. Ampomah

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA—OAKLAND**

CARLOS HERNANDEZ, an individual;
CESAR MORA, an individual; and MARIA
MONTES, an individual; on behalf of
themselves and others similarly-situated,

Plaintiffs,

v.

GRUBMARKET, INC., a Delaware
Corporation GRAND FOOD, INC., a California
Corporation; PAUL CHIU, an individual;
BENJAMIN CHIU, an individual; LINGNEY
CHIU, an individual; and DOES 1-20, inclusive,

Defendants.

KASSANDRA ANAYA, an individual, on
behalf of herself, the State of California and
other current and former employees,

Cross-Complainant,

v.

GRUBMARKET, INC., a Delaware
Corporation GRAND FOOD, INC., a California
Corporation; PAUL CHIU, an individual;
BENJAMIN CHIU, an individual; LINGNEY
CHIU, an individual; and DOES 1-20, inclusive,

Cross-Defendants.

Case Nos.: RG20071436, RG20052426

~~PROPOSED~~ ORDER AND JUDGEMENT;

- 1. GRANTING FINAL APPROVAL OF CLASS ACTION & PAGA SETTLEMENT;**
- 2. AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;**
- 3. AWARDING ENHANCEMENT TO THE REPRESENTATIVE PLAINTIFF; AND**
- 4. AWARDING REIMBURSEMENT OF SETTLEMENT ADMINISTRATION COSTS**

Date: September 15, 2022

Time: 3:00 p.m.

Dept.: 24

Reservation No. 071940108973

Before the Honorable Jenna Whitman

1 This matter, having come before the Superior Court of the State of California, in and for the
2 County of Alameda, at 3:00 p.m. on September 15, 2022 in Department 24, with Advocates for
3 Worker Rights LLP and Centro Legal de la Raza appearing as counsel for Representative Plaintiffs
4 Carlos Hernandez, Cesar Mora, Maria Montes, and Kassandra Anaya, individually and on behalf of
5 the Plaintiff Class and Aggrieved Employees, and Quarles & Brady, LLP appearing as counsel for
6 defendants Grand Food, Inc., Paul Chiu, Lingney Chiu, Benjamin Chiu, and Proskauer Rose, LLP
7 appearing as counsel for Defendant Grubmarket, Inc. (“Defendants”). The Court, having carefully
8 considered the briefs, argument of counsel and all matters presented to the Court and good cause
9 appearing, hereby GRANTS Plaintiffs’ Motion for Final Approval of Class Action Settlement and
10 enters Judgment as follows.

11 12 I. FINDINGS

13 Based on the oral and written argument and evidence presented in connection with the motion,
14 the Court makes the following findings:

15 1. All terms used herein shall have the same meaning as defined in the proposed Settlement
16 Agreement (“Agreement”).

17 2. This Court has jurisdiction over the subject matter of the above-captioned litigation and over
18 all Parties to this litigation, including the Settlement Class.

19 Preliminary Approval of the Settlement

20 3. On May 9, 2022, the Court granted preliminary approval of a class-wide settlement. At this
21 same time, the Court approved certification of a provisional Settlement Class for settlement purposes
22 only.

23 Notice to the Plaintiff Class

24 4. In compliance with the Preliminary Approval Order, the Class Notice Package in English,
25 Spanish, and simplified Chinese, was mailed by first class mail to the Plaintiff Class members at their
26 last known addresses on or about June 28, 2022. Mailing of the Class Notice Package to their last
27 known addresses was the best notice practicable under the circumstances and was reasonably
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1 calculated to communicate actual notice of the litigation and the proposed settlement to the Plaintiff
2 Class.

3 5. According to the Claims Administrator, there are 679 members of the Plaintiff Class who will
4 receive an Individual Settlement Share. The deadline for opting out or objecting was August 12, 2022.
5 There was an adequate interval between mailing of the Notice and the deadline to permit Plaintiff
6 Class members to choose what to do and act on their decision. Only 1 class member opted out, and
7 no one objected.

8 **Fairness of the Settlement**

9 6. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*, 48
10 Cal.App.4th 1794, 1801 (1996).

- 11 a. There has been no collusion between the parties in reaching the proposed settlement.
12 b. Plaintiffs' investigation and discovery have been sufficient to allow the court and
13 counsel to act intelligently.
14 c. Counsel for both parties are experienced in similar employment class action litigation.
15 All counsel recommended approval of the Agreement.
16 d. No objections from class members were received.
17 e. The participation rate was high, with only one member opting-out.

18 7. The consideration to be given to the Settlement Class members under the terms of the
19 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
20 asserted in this action and is fair, reasonable and adequate compensation for the release of Settlement
21 Class members' claims, given the uncertainties and risks of the litigation and the delays which would
22 ensue from continued prosecution of the action.

23 8. The proposed Agreement is approved as fair, adequate and reasonable and in the best interests
24 of class members.

25 **Attorneys' Fees/Costs**

26 9. The Agreement provides for (and counsel seeks) an award of up to \$328,895.50 to Class
27 Counsel as attorneys' fees in this action, representing 33 & 1/3% of the Gross Settlement Fund.
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1 However, 10% of the attorneys' fees shall be held in an interest-bearing account maintained
2 by the Settlement Administrator, pending approval of a final compliance status report after Settlement
3 distribution. Class Counsel also requests an award of \$16,708.41 as reimbursement for litigation
4 costs.

5 10. The award of attorneys' fees and reimbursement of litigation costs are reasonable, in light of
6 the contingent nature of Class Counsel's fee, the risks assumed, the results achieved by Class Counsel,
7 and in light of the significant amount of uncompensated work Class Counsel anticipates post-final
8 approval of the settlement.

9 **Enhancement Award**

10 11. The Agreement provides for an Enhancement Award of \$10,000.00 for each Representative
11 Plaintiff (total of up to \$40,000.00, collectively) from the Gross Settlement Amount, subject to the
12 Court's approval. The Court finds this Enhancement Award reasonable in light of the risks and
13 burdens undertaken by the Representative Plaintiffs in this Action and for their time and effort in
14 bringing and prosecuting this matter on behalf of the Plaintiff Class.

15 **Cost of Settlement Administration**

16 12. The Agreement provides for payment of settlement administration expenses from the Gross
17 Settlement Amount. The Settlement Administrator has \$10,953.69 in Claims Administration
18 expenses. The amount of this payment is reasonable in light of the work performed by the Settlement
19 Administrator and shall be awarded thereto.

20 **PAGA Payment**

21 13. The Agreement provides for a PAGA payment of \$20,000, from which \$15,000 shall be
22 allocated and delivered to the California Labor and Workforce Development Agency ("LWDA").
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24 **II. ORDERS**

25 Based on the foregoing findings, and good cause appearing, **IT IS HEREBY ORDERED**
26 **THAT:**
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1 1. The Settlement Class is certified for the purposes of settlement only. The Settlement Class is
2 hereby defined as:

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4 All individuals who were employed by the Company Defendants in California as
5 non-exempt and/or hourly-paid employees at any time from August 14, 2016,
6 through May 9, 2022, inclusive.

7 2. All persons who meet the foregoing definition and did not exclude themselves from the
8 Agreement are members of the Settlement Class.

9 3. The Agreement, including the distribution plan and payment schedule of the \$986,686.51
10 Settlement Fund (increased from \$925,000.00 due to activation of the escalator clause contained in
11 the Agreement), agreed to by the parties in the Settlement Agreement and preliminarily approved by
12 the Court, in Orders issued on May 5 and 9, 2022, is hereby finally approved as fair, reasonable,
13 adequate, and in the best interest of the Settlement Class.

14 4. Adequate notice was provided to the Settlement Class.

15 5. Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of Advocates for Worker Rights
16 LLP, and Veronica D. Chavez and Jesse Newmark of Centro Legal de la Raza are confirmed as
17 appointed Class Counsel.

18 6. Plaintiffs Carlos Hernandez, Cesar Mora, Maria Montes, and Kassandra Anaya are confirmed
19 as Class Representatives.

20 7. Phoenix Class Action Administration Solutions is confirmed as the Settlement Administrator.

21 8. Class Counsel are awarded attorneys' fees in the amount of \$328,895.50 (minus 10% to be
22 held back, as set forth above) and litigation costs in the amount of \$16,708.41.

23 9. Payment of Enhancement Award in the amounts of \$10,000 to plaintiff Carlos Hernandez is
24 approved.

25 10. Payment of Enhancement Award in the amounts of \$10,000 to plaintiff Cesar Mora is
26 approved.

27 11. Payment of Enhancement Award in the amounts of \$10,000 to plaintiff Maria Montes is
28 approved.

1 12. Payment of Enhancement Award in the amounts of \$10,000 to plaintiff Kassandra Anaya is
2 approved.

3 13. The payment of \$10,953.69 to the Settlement Administrator for settlement administration
4 services is approved.

5 14. Allocation of \$20,000.00 for penalties under the Private Attorneys General Act of 2004,
6 California Labor Code § 2698, et seq., including the PAGA payment to the California Labor and
7 Workforce Development Agency in the amount of \$15,000 (i.e., 3/4 of \$20,000), is approved.

8 15. If one or more Class Members fail to cash the check for their Settlement Shares within 90
9 days after it is mailed to their last known address, and if the aggregate funds represented by the
10 uncashed checks total twenty thousand dollars (\$20,000) or more, such remaining funds will be
11 redistributed to each Participating Class Member who did cash their original check, applying the same
12 pro rata formula for the original Settlement Shares. This distribution shall take place within fifteen
13 (15) days of the check-cashing deadline.

14 16. If the aggregate funds represented by uncashed Class Member checks total less than \$20,000,
15 or any funds remain after a second distribution, Legal Aid at Work is approved as *cy pres* beneficiary
16 of the unclaimed funds that remain.

17 17. A Final Judgment in this action is hereby entered and this shall constitute a Judgment for
18 purposes of California Rules of Court, Rule 3.769(h).

19 18. This Final Judgment shall bind each Settlement Class member and shall operate as a full
20 release and discharge of the released claims against the released parties. All rights to appeal the Final
21 Judgment have been waived. This Final Judgment and Final Approval Order shall have *res judicata*
22 effect and bar all Settlement Class members from bringing any action asserting Settlement Class
23 members' released claims under the Agreement.

24 19. Notice of entry of this Final Approval Order and Final Judgment shall be given to Class
25 Counsel on behalf of Representative Plaintiffs and all Settlement Class members. It shall not be
26 necessary to send notice of entry of this Final Approval Order and Final Judgment to individual
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1 Settlement Class members. The time for any appeal shall run from service of notice of entry of the
2 Final Approval Order and Final Judgment by Class Counsel on Defendants.

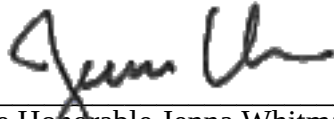
3 20. After entry of this Order and Final Judgment, the Court shall retain jurisdiction to construe,
4 interpret, implement, and enforce the Agreement and this Judgment, to hear and resolve any contested
5 challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising from
6 or in connection with the distribution of settlement benefits.

7 21. In the event the Settlement does not become final and effective in accordance with the terms
8 of the Settlement Agreement, or is terminated, cancelled or fails to become effective for any reason,
9 then this Final Approval Order and Final Judgment, and all orders entered in connection herewith
10 shall be rendered null and void and shall be vacated.

11 22. A Compliance Hearing is hereby set for June 7, 2023 3:00 p.m. in Department 24 of this
12 Court. At least ten (10) court days before the Compliance Hearing, Class Counsel shall submit a Case
13 Management Conference Statement, accompanied by a Declaration from the Settlement
14 Administrator (including a summary accounting identifying the distributions made, the number and
15 value of any uncashed checks, the status of any unresolved issues, and any other matters appropriate
16 to evaluate the effectiveness and completeness of the distribution).

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18 **IT IS SO ORDERED.**

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20 Dated: 09/15/2022

By: 

The Honorable Jenna Whitman
Alameda County Superior Court Judge
Jenna Whitman / Judge

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