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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

SPENCER SUMISAKI, DAVIAN
MONTGOMERY, individually, and on behalf
of other members of the general public
similarly situated; NADIA MORALES,
individually, and on behalf of other members
of the general public similarly situated and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act; NINA WILLIAMS, individually, on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act,

Plaintiffs,

v.

BERKELEY BOWL PRODUCE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: RG19014520

Honorable Evelio Grillo
Department 21

CLASS ACTION

**[REVISED PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Reservation No. 768154232963
Date: February 15, 2022
Time: 10:00 a.m.
Department: 21

Complaint Filed: April 10, 2019
FAC Filed: July 17, 2019
SAC Filed: November 20, 2020
Trial Date: None Set

1 This matter has come before the Honorable Evelio Grillo in Department 21 of the Superior
2 Court of the State of California, for the County of Alameda, on February 15, 2022 at 10:00 a.m. for
3 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Lawyers *for* Justice, PC
4 appears as counsel for Plaintiffs Davian Montgomery, Nadia Morales, and Nina Williams
5 ("Plaintiffs") and Hopkins & Carley appears as counsel for Defendant Berkeley Bowl Produce, Inc.
6 ("Defendant").

7 The Court, having carefully considered the papers, argument of counsel, and all matters
8 presented to the Court, and good cause appearing, hereby GRANTS Plaintiffs' Motion for
9 Preliminary Approval of Class Action Settlement.

10 **IT IS HEREBY ORDERED THAT:**

11 1. The Court preliminarily approves the Class Action and PAGA Settlement
12 Agreement and Stipulation ("Settlement," "Agreement," or "Settlement Agreement"), attached as
13 "EXHIBIT 1" to the Declaration of Edwin Aiwarzian in Support of Plaintiffs' Motion for Preliminary
14 Approval of Class Action Settlement. This is based on the Court's determination that the Settlement
15 falls within the range of possible approval as fair, adequate, and reasonable.

16 2. This Order incorporates by reference the definitions in the Settlement Agreement,
17 and all capitalized terms defined therein shall have the same meaning in this Order as set forth in the
18 Settlement Agreement.

19 3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate
20 and reasonable. It appears to the Court that extensive investigation and research have been
21 conducted such that counsel for the parties at this time are able to reasonably evaluate their respective
22 positions. It further appears to the Court that the Settlement, at this time, will avoid substantial
23 additional costs by all parties, as well as avoid the delay and risks that would be presented by the
24 further prosecution of the case. It further appears that the Settlement has been reached as the result
25 of intensive, serious and non-collusive, arms-length negotiations, and was entered into in good faith.

26 4. The Court preliminarily finds that the Settlement, including the allocations for
27 Attorneys' Fees, Attorneys' Costs, Service Payments, PAGA Allocation, Settlement Administration
28 Costs, and payments to the Settlement Class Members provided thereby, appear to be within the

1 range of reasonableness of a settlement that could ultimately be given final approval by this Court.
2 Indeed, the Court has reviewed the monetary recovery that is being granted as part of the Settlement
3 and preliminarily finds that the monetary settlement awards made available to the Class Members
4 are fair, adequate, and reasonable when balanced against the probable outcome of further litigation
5 relating to certification, liability, and damages issues.

6 5. The Court concludes that, for settlement purposes only, the proposed Class meets
7 the requirements for certification under section 382 of the California Code of Civil Procedure in
8 that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
9 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
10 community of interest amongst the members of the Class with respect to the subject matter of the
11 litigation; (c) Plaintiffs' claims are typical of the claims of the members of the Class; (d) Plaintiffs
12 will fairly and adequately protect the interests of the members of the Class; (e) a class action is
13 superior to other available methods for the efficient adjudication of the controversy; and (f) Class
14 Counsel is qualified to act as counsel for Plaintiffs in their individual capacities and as the
15 representatives of the Class.

16 6. The Court conditionally certifies, for settlement purposes only, the Class, defined as
17 follows:

18 All current and former hourly-paid or non-exempt employees who worked for
19 Defendant within the State of California at any time during the period from April 10,
20 2015 through the date of this Order.

21 7. The Court provisionally appoints Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh,
22 and Melissa LeBlanc of Lawyers *for* Justice, PC as counsel for the Class ("Class Counsel").

23 8. The Court provisionally appoints Plaintiffs Davian Montgomery, Nadia Morales,
24 and Nina Williams as the representatives of the Class (together, "Class Representatives").

25 9. The Court provisionally appoints Simpluris, Inc. ("Simpluris") to handle the
26 administration of the Settlement ("Settlement Administrator").

27 10. Within fifteen (15) calendar days after notice of entry this Order, Defendant shall
28 provide to the Settlement Administrator a data file that identifies for each Class Member, his/her full
name, last-known address, Social Security number, and number of Qualifying Workweeks and, if

1 applicable, Qualifying PAGA Workweeks for each Class Member (collectively referred to as the
2 “Class List”) in conformity with the Settlement Agreement.

3 11. The Court approves, both as to form and content, the Notice of Class Action and
4 PAGA Settlement (“Class Notice”) attached hereto as “**EXHIBIT 1.**” The Class Notice shall be
5 provided to Class Members in the manner set forth in the Settlement Agreement. The Court finds
6 that the Class Notice appears to fully and accurately inform the Class Members of all material
7 elements of the Settlement, of Class Members’ right to be excluded from the Class Settlement by
8 submitting an opt out request, of Class Members’ right to dispute the Qualifying Workweeks and/or
9 Qualifying PAGA Workweeks credited to each of them, and of each Settlement Class Member’s
10 right and opportunity to object to the Class Settlement by submitting a written objection to the
11 Settlement Administrator. The Court further finds that distribution of the Class Notice substantially
12 in the manner and form set forth in the Settlement Agreement and this Order, and that all other dates
13 set forth in the Settlement Agreement and this Order, meet the requirements of due process and shall
14 constitute due and sufficient notice to all persons entitled thereto. The Court further orders the
15 Settlement Administrator to mail the Class Notice by First-Class U.S. mail to all Class Members
16 within fourteen (14) calendar days of receipt of the Class List, pursuant to the terms set forth in the
17 Settlement Agreement.

18 12. The Court hereby preliminarily approves the proposed procedure, set forth in the
19 Settlement Agreement, for seeking exclusion from the Class Settlement. Any Class Member may
20 choose to be excluded from the Class Settlement by submitting a timely and valid written opt out
21 request, in conformity with the requirements set forth in the Class Notice, to the Settlement
22 Administrator, postmarked no later than the date which is forty-five (45) calendar days from the
23 initial mailing of the Class Notice to Class Members (“Response Deadline”). Any such person who
24 timely and validly chooses to opt out of, and be excluded from, the Class Settlement will not be
25 entitled to any recovery under the Class Settlement and will not be bound by the Class Settlement
26 or have any right to object, appeal, or comment thereon. Class Members who have not submitted a
27 timely and valid request to be excluded from the Class Settlement (i.e., Settlement Class Member)
28 shall be bound by the Class Settlement. The opt out procedure does not apply to the PAGA

1 Settlement; PAGA Members will be bound to the PAGA Settlement (i.e., the settlement and release
2 of Settled PAGA Claims) irrespective of whether they exclude themselves from the Class
3 Settlement.

4 13. A Final Approval Hearing shall be held before this Court on June 15, 2022 at 10:00
5 a.m. in Department 21 of the Alameda County Superior Court, located at 1221 Oak Street, Oakland,
6 California 94612, to determine all necessary matters concerning the Settlement, including: whether
7 the proposed settlement of the Action on the terms and conditions provided for in the Settlement is
8 fair, adequate, and reasonable and should be finally approved by the Court; whether a judgment, as
9 provided in the Settlement, should be entered herein; whether the plan of allocation contained in the
10 Settlement should be approved as fair, adequate, and reasonable to the Class Members; and
11 determine whether to finally approve the requests for the Attorneys' Fees, Attorneys' Costs, Service
12 Payments, and Settlement Administration Costs.

13 14. Class Counsel shall file a motion for final approval of the Settlement and for
14 Attorneys' Fees, Attorneys' Costs, Service Payments, and Settlement Administration Costs, along
15 with the appropriate declarations and supporting evidence, including the Settlement Administrator's
16 declaration, by May 23, 2022 to be heard at the Final Approval Hearing.

17 15. To object to the Class Settlement, a Class Member must submit their written
18 objection, in conformity with the requirements set forth in the Class Notice, to the Settlement
19 Administrator on or before the Response Deadline. The objection must be signed and must contain
20 the information that is required, as set forth in the Class Notice, including and not limited to the
21 grounds for the objection.

22 16. The Settlement is not a concession or admission, and shall not be used against
23 Defendant as an admission or indication with respect to any claim of any fault or omission by
24 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any
25 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
26 thereof, shall in any event be construed as, offered or admitted into evidence as, received as or
27 deemed to be in evidence for any purpose adverse to the Defendant, including, but not limited to,
28 evidence of a presumption, concession, indication or admission by Defendant of any liability, fault,

wrongdoing, omission, concession, or damage, except for legal proceedings concerning the implementation, interpretation, or enforcement of the Settlement.

17. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled or fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated, and the Parties shall revert back to their respective positions as of before entering into the Settlement Agreement.

18. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and any dates provided for in the Settlement Agreement without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

IT IS SO ORDERED.

Dated: _____

By: _____

The Honorable Evelio Grillo
Judge of the Superior Court