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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

MICHAEL GREBE, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

MARY ANN'S BAKING CO., INC., a
California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No. 34-2020-00285254-CU-OE-GDS

CLASS ACTION

*Assigned to the Honorable Jill H. Talley for all
purposes*

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS,
COLLECTIVE, AND REPRESENTATIVE
ACTION SETTLEMENT**

Reservation No. 2662349

Date: October 28, 2022

Time: 9:00 a.m.

Dept.: 25

Filed: September 14, 2020

FAC Filed: May 12, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on October 28, 2022, at 9:00 a.m., in Department 25
4 before the Honorable Jill H. Talley, presiding. This putative class action was filed on September 14,
5 2020. In the operative Complaint, named Plaintiffs Silvia Madrigal Vargas and Michael Grebe
6 (“Plaintiffs”) allege that Defendant Mary Ann’s Baking Co., Inc. (“Defendant”) violated California law
7 by: (1) failing to pay overtime; (2) failing to provide meal and rest periods or pay premiums in lieu
8 thereof; (3) failing to pay minimum wages; (4) failing to timely pay final wages; (5) failing to provide
9 accurate wage statements; (6) failing to reimburse all expenses; and (7) failing to pay all sick leave
10 wages owed. Plaintiffs alleged Defendant is liable for civil penalties under the Private Attorneys General
11 Act of 2004 (“PAGA”) and engaged in unfair competition based on these violations. Plaintiffs sought
12 attorneys’ fees and costs as part of this Action. Defendant denies all of Plaintiffs’ claims and denies this
13 case is appropriate for class treatment. No class has been certified.

14 The Parties agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Stipulation and Settlement of Class, Collective, and Representative Action
17 (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the Agreement.
18 The Court, having received and considered Plaintiffs’ Motion for Preliminary Approval of Class Action
19 and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice of Settlement,
20 the proposed Claim Form, and other evidence, HEREBY ORDERS AND MAKES
21 DETERMINATIONS AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is appropriate
25 under the Code of Civil Procedure and related case law:

26 All non-exempt, hourly individuals who performed work for any amount of
27 time for Defendant as non-exempt, hourly employees, however titled, in
28 California at any time from April 6, 2016 through February 28, 2022
 (“Class” and “Class Members”).

1 The Court recognizes the foregoing definition is for Class Member identification purposes only
2 and is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

3 The Court finds that Class Members meet the ascertainability and numerosity requirements for
4 settlement purposes since the Parties can identify with a matter of certainty, based on payroll records,
5 individuals who fall within the definition and the number of Class Members would make joinder
6 impractical. The commonality and predominance requirements are met for settlement purposes since there
7 are questions of law and fact common to Class Members. The common questions of law or fact in this
8 case stem from Plaintiffs' contentions Defendant caused the violations outlined above by: (a) failing to
9 authorize and permit meal and rest periods due to inadequate staffing, excessive production quotas, and
10 being required to don and doff personal protective equipment ("PPE") while off-the-clock during meal
11 periods; (b) failing to pay for all hours worked; (c) failing to factor in bonuses and other non-discretionary
12 incentive payments into employees' regular rate of pay for overtime, sick leave, and other premium wage
13 payment purposes; (d) failing to pay daily overtime; (e) failing to provide required sick leave and pay sick
14 leave wages; (f) failing to provide accurate wages statements showing all premium wages owed and hours
15 worked; (g) failing to reimburse for business expenses including the use of employee's personal cell
16 phones and requiring employees to purchase non-slip shoes without reimbursement; and (h) failing to
17 timely pay all final wages owed. The PAGA, waiting time penalty, wage statement violation, and unfair
18 competition claims also derive from these alleged violations. Additionally, Class Members seek the same
19 remedies under state law. The typicality requirement for settlement purposes is also satisfied since the
20 claims of the Class Representatives are based on the same facts and legal theories as those applicable to
21 the Class Members.

22 The Court finds preliminarily and conditionally certifying the Class is required to avoid having
23 each Class Member litigate similar claims individually. This settlement will achieve economies of scale
24 for Class Members with relatively small individual claims and conserve the resources of the Court.

25 The Court finds Plaintiffs and Plaintiffs' counsel, Shimoda & Rodriguez, PC and Justice Law
26 Corporation, to be adequate representatives of the Class. The Court appoints Plaintiffs and Plaintiffs'
27 counsel as the Class Representatives and Class Counsel respectively.

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II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as **Exhibit**

A. The Court finds, on a preliminary and conditional basis, that the Agreement is fair, reasonable, and adequate and falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court finds the Agreement was entered into only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. The Court also acknowledges that Class Members may present any objections to the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$600,000 Gross Fund Value, which will be paid on a claims made basis with a guaranteed Settlement Floor Amount equal to 40% of the Net Settlement Amount as set forth in the Agreement. Plaintiffs have provided adequate reasoning and explanation as to why a claims made settlement with a reversion of unclaimed funds to Defendant is appropriate under the circumstances of this case. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 721 (2006) ("The analysis additionally recognized that a court approved settlement could properly include a 'reversion of ... funds to the defendant'"); *Cundiff v. Verizon California, Inc.*, 167 Cal.App.4th 718, 728 (2008) (noting that *In re Microsoft I-V Cases* found that a class settlement may provide for a reversion so long as it does not render the settlement, as a whole, unfair, inadequate, or unreasonable and distinguishing the case before it on the grounds that the class settlement agreement made no provision for unclaimed funds).

The Court approves of Simpluris, Inc., acting as the Settlement Administrator in this case and hereby appoints Simpluris, Inc., to fulfill those duties in this case as outlined in the Agreement.

On a preliminary and conditional basis, the Court approves of the amounts allocated under the Agreement for attorney's fees and costs (35% of the Gross Fund Value and \$18,500, respectively), for Enhancement Payments to the Class Representatives (\$10,000 each), and for Settlement Administration Costs (\$10,500). The Court finds that an award of fees under the common fund doctrine is appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that Plaintiffs and Class Counsel were able to negotiate on behalf of Class Members can be accurately

1 traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the
2 fee request is a specific, lump-sum percentage of the Gross Fund Value. *See Boeing Co. v. Van Gemert*,
3 444 U.S. 472, 477-481 (1980); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir.
4 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480,
5 506 (2016). The attorneys' fee request as a percentage of the Gross Fund Value is within the range of
6 percentages that have been approved by other Courts in similar cases. The Court will again review these
7 amounts and allocations in connection with the final approval hearing. Plaintiffs and Class Counsel are
8 directed to provide additional information in connection with the motion for final approval that will enable
9 the Court to perform a lodestar cross check of the requested attorney's fees, quantify the amount of time
10 spent by Plaintiffs on this case and any further risks and/or burdens incurred as a result of acting as Class
11 Representatives, and an updated declaration in support of actual litigation costs.

12 The amounts allocated under the Agreement for attorney's fees and costs, for Enhancement
13 Payments to the Class Representatives, and for Settlement Administration Costs shall be included in the
14 Notice of Class Action Settlement to enable Class Members to review and comment thereon. The Court
15 will consider the reaction of Class Members when evaluating the reasonableness of the requested amounts
16 at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the
17 absence of objections or disapproval by class members to class counsel's fee request further supports
18 finding the fee request reasonable"). To the extent the Court ultimately awards less than the amounts
19 allocated under the Agreement for attorney's fees and costs, for any Enhancement Payments to the Class
20 Representatives, and Settlement Administration Costs, the difference between the amounts awarded and
21 the amounts requested shall be added to the Net Settlement Amount for distribution to Settlement Class
22 Members pro rata as set forth in the Agreement.

23 The Court approves of the \$20,000 PAGA Fund, which shall be paid from the Gross Fund Value,
24 not in addition to the Gross Fund Value, to resolve the alleged PAGA claims. Seventy-five percent (75%)
25 of the PAGA Fund will be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-
26 five percent (25%) of the PAGA Fund will be paid to PAGA Group Members on a pro rata basis. The
27 Court also finds the Agreement provides a recovery that creates an effective substantial deterrent to any
28 potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

1 The releases and waivers for Class Members who do not opt out of being bound by the Agreement
2 or submit a Claim Form and the Class Representatives are also approved by the Court as set forth in the
3 Agreement.

4 The Settlement is not a concession or admission and shall not be used against Defendant or any of
5 the Released Parties as an admission or indication as to any claim of any fault or omission by Defendant
6 or any of the Released Parties. Whether or not the Settlement is finally approved, neither the Settlement,
7 nor any document, statement, proceeding, or conduct related to the Settlement, nor any reports or accounts
8 thereof, shall in any event be construed as, disclosed, referred to, offered, or admitted in evidence, or
9 deemed to be evidence, for any purpose adverse to Defendant or the Released Parties or used in any further
10 proceeding in this Action, or in any other civil, criminal, or administrative action or proceeding, except
11 for purposes of settling the Action pursuant to the Agreement.

12 **III. APPROVAL OF THE NOTICE OF SETTLEMENT, CLAIM FORM, AND NOTICE** 13 **PROCEDURES**

14 The Court finds the proposed Notice of Settlement and proposed Claim Form, which were
15 submitted with Plaintiffs' Motion as Exhibits F and G respectively, fairly, and adequately advises Class
16 Members of the terms of the Agreement, rights being waived, their right to opt out, ability to dispute the
17 number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount,
18 how to participate in the settlement, how to file documentation in opposition to the settlement, and when
19 to appear at the fairness hearing. The Court finds the Notice of Settlement and Claim Form and proposed
20 distribution of them by first class mail to each identified Class Member at his or her most recent address
21 based on a National Change of Address database search from the Class Members' last known address and
22 a skip trace on any Class Members who have the Notice of Settlement or Claim Form returned as
23 "undeliverable" or "not at this address" comports with constitutional requirements, including due process.

24 The Court also finds because there is a strong interest in providing Class Members the opportunity
25 to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights,
26 the sharing of employment information, including social security numbers, is not a serious intrusion on
27 privacy rights. The Court orders Defendant to provide first and last name, last known mailing address,
28 social security number, and hire and termination dates, total number of workweeks during which the Class

Member performed any work to the Settlement Administrator only, and not to Plaintiffs or Class Counsel, to process this settlement. The Settlement Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class List	Within 30 calendar days after Preliminary Approval
Last day for Settlement Administrator to complete NCOA search, update Class Member and mailing information, and mail Notice of Class Action Settlement and Claim Form	Within 14 calendar days after the Settlement Administrators' receipt of Class List
Last day for Class Members to Submit Request for Exclusion, submit disputes, submit Notice of Objection, and submit Claim Form	60 ¹ calendar days after mailing of Notice of Class Action Settlement or within 15 calendar days after Notice of Class Action Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after the Response Deadline
Last day for Defendant to fund settlement	Within 15 calendar days after the Effective Date
Last day for Settlement Administrator to deliver all payments due under the Settlement	Within 7 calendar days after funds are deposited with the Settlement Administrator

¹ The Court recognizes that the Agreement states that the Class Members' Response Deadline is 45 days, not 60 days. Upon the Court's order and the Parties agreement, the Response Deadline is extended from 45 days to 60 days. This shall be the only change to the Agreement.

Last day for Settlement Class Members to cash settlement checks	180 calendar days after issuance of checks to Settlement Class Members
Last day for Settlement Administrator to deliver value of uncashed settlement checks to California State Controller to be held in the name of each expired check payee, pursuant to applicable unclaimed property laws	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 10 calendar days after residual funds sent to California State Controller

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and directs the parties to contact the Clerk for Department 25 to schedule a final approval hearing to take place in this Department on a Friday at 9:00 a.m. consistent with the administration timelines set forth in the Agreement. Briefs and supporting documentation relating to the final approval hearing are to be submitted according to the California Code of Civil Procedure. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the Parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The Parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court