

FILED / ENDORSED

MAY 8 2023

By T. Shaddix, Deputy Clerk

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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 FINAL
APPROVAL OF CLASS, COLLECTIVE,
AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: April 21, 2023

Time: 9:00 a.m.

Dept.: 27

Judge: Hon. Jill H. Talley

Filed: September 14, 2020

FAC Filed: May 12, 2022

Trial Date: None Set

[PPSD] ORDER GRANTING FINAL APPROVAL OF CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION
SETTLEMENT

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1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on April 21, 2023, at 9:00 a.m., in Department 27 before the
4 Honorable Jill H. Talley, presiding. This putative class action was filed on September 14, 2020. In the
5 operative Complaint, named Plaintiffs Silvia Madrigal Vargas and Michael Grebe ("Plaintiffs") allege
6 that Defendant Mary Ann's Baking Co., Inc. ("Defendant") violated California law by: (1) failing to pay
7 overtime; (2) failing to provide meal and rest periods or pay premiums in lieu thereof; (3) failing to pay
8 minimum wages; (4) failing to timely pay final wages; (5) failing to provide accurate wage statements;
9 (6) failing to reimburse all expenses; and (7) failing to pay all sick leave wages owed. Plaintiffs alleged
10 Defendant is liable for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") and
11 engaged in unfair competition based on these violations. Plaintiffs sought attorneys' fees and costs as
12 part of this Action. Defendant denies all of Plaintiffs' claims and denies this case is appropriate for class
13 treatment. No class has been certified. The class settlement was preliminary approved by the Court on
14 October 31, 2022.

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

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

22 The Court also finds that certifying the Class is required to avoid having each Class Member
23 litigate similar claims individually. This settlement will achieve economies of scale for Class Members
24 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.
28

II. APPROVING CLASS AND COLLECTIVE ACTION AND PAGA SETTLEMENT

The Court has again reviewed the preliminary approved Agreement, which was submitted with Plaintiffs' Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also finds the Agreement was agreed upon 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 finds that Class Members were able to object to the Agreement and its terms through the administration process and at a fairness hearing or opt-out of being bound by the preliminarily approved Agreement. No objections were made by Class Members and no Class Members opted out of the settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court gives final approval to the Agreement and all terms therein as if stated here in full. 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 the \$20,000 PAGA Fund, which shall be paid from the Gross Fund Value, not in addition to the Gross Fund Value, to resolve the alleged PAGA claims. Seventy-five percent (75%) of the PAGA Fund will be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of the PAGA Fund will be paid to PAGA Group Members on a pro rata basis. The Court also finds that based on the facts of this case and the disputed issues, the Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

1 The releases and waivers for Class Members who did 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 Class Counsel sought an award of attorneys' fees of \$210,000.00, attorneys' costs of \$17,117.24,
5 Enhancement Payments to the Class Representatives in the amount of \$10,000 each, and for Settlement
6 Administrator Costs in the amount of \$10,500. Defendant does not oppose these requests. The Notice
7 of Settlement sent to Class Members included information regarding these amounts and that they would
8 be requested in connection with final approval of the Agreement. Class Members have been given the
9 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.
10 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including
11 prior fee awards in Sacramento County Superior Court, and the amount of time expended in the
12 litigation for the benefit of Class Members. The Court finds that the rates requested and hours expended
13 are reasonable. The Court has also reviewed the updated itemized costs submitted by Class Counsel, the
14 information provided by the Class Representatives regarding the efforts and burdens undertaken for the
15 benefit of the class, and the cost information provided by the Settlement Administrator in its declaration.
16 The Court finds that these amounts requested for attorneys' fees and costs, the Enhancement Payment,
17 and the Settlement Administrator Costs are fair and reasonable, and awarded as requested and deducted
18 from the gross settlement amount. This finding is further supported by the lack of objection by Class
19 Members to these amounts. The awarded attorneys' fees and costs shall be paid between Class Counsel
20 in accordance with the terms of the Joint Prosecution Agreement, which was submitted as Exhibit 4 to
21 the Declaration of Douglas Han. The difference between the actual attorney's costs awarded and the
22 originally allocated \$18,500 will be added to the Net Settlement Amount pursuant to the terms of the
23 Agreement.

24 The Settlement is not a concession or admission and shall not be used against Defendant or any of
25 the Released Parties as an admission or indication as to any claim of any fault or omission by Defendant
26 or any of the Released Parties. Whether or not the Settlement is finally approved, neither the Settlement,
27 nor any document, statement, proceeding, or conduct related to the Settlement, nor any reports or accounts
28 thereof, shall in any event be construed as, disclosed, referred to, offered, or admitted in evidence, or

1 deemed to be evidence, for any purpose adverse to Defendant or the Released Parties or used in any further
2 proceeding in this Action, or in any other civil, criminal, or administrative action or proceeding, except
3 for purposes of settling the Action pursuant to the Agreement.

4 **III. APPROVAL OF THE NOTICE OF SETTLEMENT, CLAIM FORM, AND NOTICE**
5 **PROCEDURES**

6 The Court finds that the Notice Packet, which was submitted with Plaintiffs' Motion as Exhibit A
7 to the Declaration of Stephen Gomez, fairly and adequately advised Class Members of the terms of the
8 Agreement, rights being waived, their right to opt out, ability to dispute the number of workweeks worked
9 during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the
10 settlement, how to file documentation in opposition to the settlement, and when to appear at the fairness
11 hearing. The Court further finds that the Notice Packet and its distribution by first class mail to each
12 identified Class Member at his or her most recent address based on a National Change of Address database
13 search from the Class Members' last known address and a skip trace on any Class Members whose Notice
14 Packet was returned as "undeliverable" or "not at this address" comported with constitutional
15 requirements, including due process.

16 **IV. IMPLEMENTATION SCHEDULE**

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

19

20 Last day for Defendant to fund settlement	Within 15 calendar days after the Effective Date
21	
22 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
23	
24 Last day for Settlement Class Members to cash settlement checks	180 calendar days after issuance of checks to Settlement Class Members
25	
26	

27
28

1 2 3 4 5	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
6 7	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 10 calendar days after residual funds sent to California State Controller

8 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
9 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
10 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
11 Agreement.

12
13 **IT IS SO ORDERED.**

14
15 Date: 5/6/23

16 By: _____



Judge of the Superior Court

JILL H. TALLEY