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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

OSVALDO MARTINEZ, individually, and on
behalf of other aggrieved employees pursuant to
the California Private Attorneys General Act,

Plaintiff,

vs.

THE MOCHI ICE CREAM COMPANY, a
California corporation; THE MOCHI ICE
CREAM COMPANY, LLC, an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV44789

Honorable Douglas W. Stern
Department 68

**[PROPOSED] ORDER AND JUDGMENT
GRANTING APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (CAL. LABOR
CODE § 2698, ET SEQ.) SETTLEMENT
AGREEMENT AND AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS,
ENHANCEMENT AWARD, AND
ADMINISTRATION COSTS**

[Notice of Motion and Motion for Approval of
Private Attorneys General Act (Cal. Labor Code §
2698, *Et Seq.*) Settlement Agreement and Award of
Attorneys' Fees, Litigation Costs, Enhancement
Award, and Administration Costs; Declaration of
Plaintiff's Counsel (Edwin Aiwazian); and
Declaration of Plaintiff (Osvaldo Martinez) filed
concurrently herewith]

Reservation ID: 616475512624
Date: May 18, 2023
Time: 8:30 a.m.
Department: 68

Complaint Filed: November 20, 2020
FAC Filed: December 9, 2022
Trial Date: None Set

1 This matter has come before the Honorable Douglas W. Stern in Department 68 of the Superior
2 Court of the State of California, for the County of Los Angeles, on May 18, 2023 at 8:30 a.m., on Plaintiff
3 Osvaldo Martinez’s (“Plaintiff”) Motion for Approval of Private Attorneys General Act (Cal. Labor Code §
4 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees, Litigation Costs, Enhancement Award,
5 and Administration Costs (“Motion for Approval of Settlement”). Lawyers *for* Justice, PC appeared for
6 Plaintiff and CDF Labor Law LLP appeared for Defendants The Mochi Ice Cream Company, LLC and The
7 Mochi Ice Cream Company (together, “Defendant” or “My/Mochi”).

8 On or around August 16, 2022, Plaintiff and Defendant (together, the “Parties”) executed the Private
9 Attorneys General Act Settlement Agreement and Release (“Settlement,” “Settlement Agreement,” or
10 “Agreement”).

11 The Court has reviewed and considered (1) the Motion for Approval of Settlement, (2) the
12 Declarations of Plaintiff’s Counsel Edwin Aiwarzian and Plaintiff Osvaldo Martinez, and (3) the Settlement
13 Agreement.

14 Having duly considered the Parties’ papers and oral argument, and good cause appearing,

15 **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

- 16 1. The Motion for Approval of Settlement is granted.
- 17 2. All terms used herein shall have the same meaning defined in the Settlement Agreement.
- 18 3. The Court finds that Plaintiff has satisfied the prerequisites under the California Private
19 Attorneys General Act (Cal. Labor Code § 2698, *et seq.*) (“PAGA”), including, and not limited to, providing
20 the California Labor and Workforce Development Agency (“LWDA”) and Defendant with notice of the
21 specific provisions of the California Labor Code alleged to have been violated, including, and not limited
22 to, the facts and theories to support the alleged violations, in conformity with California Labor Code §
23 2699.3(a).
- 24 4. The Court also finds that the Settlement Agreement has been submitted to the LWDA in
25 conformity with California Labor Code § 2699(l)(2) and that the LWDA has not sought to intervene or
26 appear in the above-captioned action (“Action”).

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1 5. The aggrieved employees covered under the Settlement consist of the following individuals:

2 All current and former Warehouse Managers and all current and former non-exempt employees
3 of The Mochi Ice Cream Company, LLC (or its predecessor entity The Mochi Ice Cream
4 Company) who worked at My/Mochi in California at any time during the Settlement Period
5 ("Settlement Group Members").

6 6. The Court finds that the Parties reached the Settlement as a result of arm's-length
7 negotiations.

8 7. Pursuant to California Labor Code § 2699(l)(2), the Court has reviewed the sum allocated
9 for payment of penalties under PAGA ("PAGA Penalties Fund"), and determines that it is fair, just,
10 reasonable, and adequate. The Court hereby approves the PAGA Penalties Fund. The PAGA Penalties
11 Fund shall be the Gross Settlement Amount (\$200,000.00) less the approved Attorneys' Fees Award and
12 Litigation Costs Award to Lawyers *for Justice*, PC ("Plaintiff's Counsel"), Enhancement Award to Plaintiff,
13 and Administration Costs to Simpluris, Inc. (the "Settlement Administrator"). Seventy-five percent (75%)
14 of the PAGA Penalties Fund shall be distributed to the LWDA ("LWDA Payment") and twenty-five percent
15 (25%) of the PAGA Penalties Fund shall be distributed to the Settlement Group Members ("Settlement
16 Group Fund") in accordance with this Order and Judgment and the Settlement Agreement.

17 8. The Court has considered the Settlement, and the monetary allocations provided thereby, and
18 finds that they are fair, just, reasonable, and adequate. The Court hereby directs the Settlement
19 Administrator to administer the Settlement and to make the payments as provided for by, and consistent
20 with, this Order and Judgment and the Settlement Agreement.

21 9. The Court approves the payment of \$76,000.00 to Lawyers *for Justice*, PC for attorneys' fees.
22 This amount shall be paid from the Gross Settlement Amount and shall be disbursed in accordance with this
23 Order and Judgment and the Settlement Agreement.

24 10. The Court approves the payment of \$5,304.91 to Lawyers *for Justice*, PC for reimbursement
25 of litigation costs and expenses incurred in the Action. This amount shall be paid from the Gross Settlement
26 Amount and shall be disbursed in accordance with this Order and Judgment and the Settlement Agreement.

27 11. The Court approves payment in the amount of \$7,500.00 to Plaintiff Osvaldo Martinez for
28 his Enhancement Award. This amount shall be paid from the Gross Settlement Amount and shall be
29 disbursed in accordance with this Order and Judgment and the Settlement Agreement.

1 12. The Court approves payment up to the amount of \$2,000.00 to Simpluris, Inc. for the
2 Administration Costs. This amount shall be paid from the Gross Settlement Amount and shall be disbursed
3 in accordance with this Order and Judgment and the Settlement Agreement.

4 13. The Parties are directed to perform in accordance with the terms set forth in this Order and
5 Judgment and the Settlement Agreement.

6 14. The Court further finds that notice of the Settlement need not be provided to the Settlement
7 Group Members; however, the Court approves the Cover Letter, attached hereto as “**EXHIBIT 1**,” and the
8 Settlement Administrator shall distribute the Cover Letter to the Settlement Group Members at the same
9 time that it distributes their share of the Settlement Group Fund (“Individual Settlement Payment”).

10 15. Within fifteen (15) court days of the Effective Date under the Settlement, Defendant will
11 provide the Settlement Administrator with the Settlement Group List, in accordance with this Order and
12 Judgment and the Settlement Agreement.

13 16. Within fifteen (15) court days of the Effective Date under the Settlement, Defendant shall
14 deposit the Gross Settlement Amount into a qualified settlement account established by the Settlement
15 Administrator for administration of the Settlement.

16 17. The Settlement Administrator shall distribute the Individual Settlement Payment checks to
17 Settlement Group Members, LWDA Payment to the LWDA, Enhancement Award to Plaintiff, Attorneys’
18 Fees Award and Litigation Costs Award to Plaintiff’s Counsel, and payment to itself for the Administration
19 Costs, as provided for by this Order and Judgment and the Settlement Agreement, no later than fourteen
20 (14) calendar days after receipt of the Gross Settlement Amount.

21 18. The Individual Settlement Payment checks issued to Settlement Group Members shall remain
22 valid and negotiable for one hundred twenty (120) calendar days, and thereafter, shall be cancelled. Funds
23 associated with such cancelled checks shall be transmitted by the Settlement Administrator to the California
24 State Controller’s Office Unclaimed Property Division, in the name of the Settlement Group Member whose
25 check is cancelled.

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1 19. Settlement Group Members shall not have the right to opt out of or object to the Settlement.
2 Upon the Effective Date under the Settlement, the State of California with respect to Defendant's
3 employment of Plaintiff and Settlement Group Members, shall, for the Settlement Period, fully and forever
4 release the Released Parties from the Released Claims.

5 20. "Released Parties" means Defendant; each and all of Defendant's past, present, and future
6 parents, affiliates, subsidiaries, divisions, predecessors, successors, managing members, divisions, affiliates,
7 affiliated entities, related entities, and assigns; the past, present, and future shareholders, owners, officers,
8 directors, board members, employees, agents, trustees, attorneys or legal representatives, insurers,
9 representatives, administrators, fiduciaries, beneficiaries, subrogees, partners, and members of the
10 foregoing; and/or any other entity or individual which could be liable for the acts or omissions of Defendant.

11 21. "Released Claims" means any claims for civil penalties provided by the California Labor
12 Code that could have been asserted by the State of California, Plaintiff on behalf of the State of California,
13 and/or any Settlement Group Member on behalf of the State of California based on the factual allegations
14 set forth in the First Amended Complaint and for violations of the sections of the California Labor Code
15 and Industrial Welfare Commission Wage Orders, including sections 201, 202, 203, 204, 226(a), 226.7,
16 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and related Industrial Welfare
17 Commission Wage Orders including *inter alia* Wage Orders 1-2001, 4-2001, and 7-2001, premised upon
18 various theories of liability, including Defendant's alleged failure to: classify the Warehouse Manager
19 position correctly (as well as any same or similar job title or job position); use shift differentials, non-
20 discretionary bonuses, and non-discretionary performance pay to calculate the correct regular rate of pay
21 used to calculate overtime pay; provide compliant meal periods and/or a meal period penalty in lieu of a
22 compliant meal period; provide compliant rest breaks and/or a rest period penalty in lieu of a compliant rest
23 period; pay minimum wages; pay overtime wages; pay wages timely upon termination of employment and
24 associated waiting time penalties; pay wages timely during employment; maintain required payroll records;
25 provide wage statements and/or accurate wage statements; provide reporting time pay; indemnify employees
26 with necessary and reasonable business expenses; and provide one day's rest in seven.

27 22. "Settlement Period" means the period from September 16, 2019 to December 15, 2021.

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1 23. No individualized notice of this Order and Judgment is required to be provided to the
2 Settlement Group Members. This Order and Judgment shall be submitted to the LWDA through the online
3 system established for the filing of notices and documents, in conformity with California Labor Code §
4 2699(1)(3).

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6 Date: _____

7 Honorable Douglas W. Stern
8 Judge of the Los Angeles Superior Court
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EXHIBIT 1

TRANSMITTAL OF INDIVIDUAL SETTLEMENT PAYMENT (“COVER LETTER”)

Oswaldo Martinez v. The Mochi Ice Cream Company, et. al.
Superior Court of the State of California for the County of Los Angeles
Case No. 20STCV44789

Dear [Settlement Group Member’s Full Name]:

Enclosed with this letter is a settlement check being paid to you pursuant to the settlement of the lawsuit filed in the Los Angeles Superior Court as *Oswaldo Martinez v. The Mochi Ice Cream Company, et. al.*, which has been designated Case No. 20STCV44789 (the “Lawsuit”). The purpose of this letter is to provide you with basic information about the Lawsuit, the reasons why you are receiving the enclosed settlement check, and the effect of the settlement on your legal rights.

I. The Lawsuit

The Lawsuit was filed on November 20, 2020, by Oswaldo Martinez (“Plaintiff”), a former employee of The Mochi Ice Cream Company, LLC and The Mochi Ice Cream Company (together, “My/Mochi”). On [Insert Date], Mr. Martinez filed the First Amended Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“First Amended Complaint”).

In the Lawsuit, Mr. Martinez alleged that he and other current and former Warehouse Managers were misclassified as exempt, and that the Warehouse Managers and non-exempt employees who worked for My/Mochi in California in or after September 16, 2019, experienced violations of the California Labor Code and applicable Industrial Welfare Commission Wage Orders by Defendant. Specifically, Mr. Martinez alleged that Defendant violated sections of the California Labor Code, including sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and related IWC Wage Orders, premised upon various theories of liability, including Defendant’s alleged failure to: classify the Warehouse Manager position correctly (as well as any same or similar job title or job position); use shift differentials, non-discretionary bonuses, and non-discretionary bonus pay to calculate overtime pay; provide compliant meal periods and/or a meal period penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a real period penalty in lieu of a compliant rest period; pay minimum wages; pay overtime wages; pay waiting time penalties upon termination; maintain required records; provide wage statements and/or accurate wage statements; indemnify employees with necessary and reasonable business expenses, and provide one day’s rest in seven. Based on these alleged violations, the Lawsuit sought civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of the State of California and all current and former Warehouse Managers and non-exempt employees who worked for Defendant in California on or after September 16, 2019.

My/Mochi denies all of the allegations in the Lawsuit. In particular, My/Mochi contends that it followed lawful policies and practices and that Mr. Martinez and other Warehouse Managers were properly classified as exempt employees. My/Mochi also contends that it followed all California Labor Code and Industrial Welfare Commission Wage Order provisions, non-exempt employees were paid all wages owed to them, non-exempt employees were provided with compliant meal and rest breaks in accordance with the California Labor Code, My/Mochi properly kept records of time worked and meal periods, and My/Mochi regularly issued accurate, itemized wage statements to its employees.

The merits of the Lawsuit have not been determined. On [Approval Date], however, the Los Angeles County Superior Court approved a settlement of the Lawsuit.

II. Why The Settlement Check is Being Sent to You

The settlement approved by the Los Angeles Superior Court on [Approval Date] involves a payment of civil penalties, the reimbursement of the attorneys' fees and litigation costs incurred by Mr. Martinez in furtherance of the Lawsuit, an Enhancement Award to Mr. Martinez, and administration costs. In accordance with PAGA, seventy-five percent (75%) of the civil penalties paid under the settlement are being paid to the California Labor and Workforce Development Agency. The remaining twenty-five percent (25%) of the civil penalties under the settlement are being distributed to all current and former Warehouse Managers and all current and former non-exempt employees of The Mochi Ice Cream Company, LLC (or its predecessor entity The Mochi Ice Cream Company) who worked for My/Mochi in California at any time between September 16, 2019 and December 15, 2021, (the "Settlement Group"). The enclosed settlement check is being sent to you because you have been identified as a Settlement Group Member.

III. How the Amount of Your Settlement Check Was Determined

The enclosed settlement check was calculated based on the number of pay periods you worked for My/Mochi between September 16, 2019 and December 15, 2021 ("Settlement Period") relative to the entire Settlement Group.

Your settlement check will remain negotiable for 120 days. If you do not cash, deposit or negotiate your settlement check within 120 days, the check will be cancelled and the funds will be sent to the State Controller's Office Unclaimed Property Division in your name.

IV. Consequences of the Settlement

The Lawsuit was filed exclusively as a representative action under PAGA, which functions as a substitute for an enforcement action by the State of California.

Although you are not a "party" to the Lawsuit, the Superior Court's orders and judgment approving the settlement of the Lawsuit binds all persons, including nonparty employees, who would be bound by a judgment in an action brought by the State of California itself. As a result, the judgment entered upon settlement of the Lawsuit is binding on you with respect to any claims for civil penalties under PAGA encompassed by the settlement. This is true regardless of whether you choose to cash, deposit, or negotiate the enclosed settlement check.

Upon the Effective Date, the State of California with respect to My/Mochi's employment of Plaintiff and Settlement Group Members, shall, for the Settlement Period, fully and forever releases My/Mochi; each and all of My/Mochi's past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, managing members, divisions, affiliates, affiliated entities, related entities, and assigns; the past, present, and future shareholders, owners, officers, directors, board members, employees, agents, trustees, attorneys or legal representatives, insurers, representatives, administrators, fiduciaries, beneficiaries, subrogees, partners, and members of the foregoing; and/or any other entity or individual which could be liable for the acts or omissions of Defendant (collectively, the "Released Parties") from the PAGA Representative Claims and any claims for civil penalties provided by the California Labor Code that could have been asserted by the State of California, Plaintiff on behalf of the State of California, and/or any Settlement Group Member on behalf of the State of California based on the factual allegations set forth in the First Amended Complaint (the "Released Claims").

The Released Claims are limited to claims for civil penalties under PAGA during the Settlement Period. The Settlement will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand,

or other action of any kind, by the State of California, Plaintiff, and each and every Settlement Group Member to obtain any recovery based on the Released Claims.

“PAGA Representative Claims” means claims for alleged violations of the sections of the California Labor Code and Industrial Welfare Commission Wage Orders, including sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and related Industrial Welfare Commission Wage Orders including *inter alia* Wage Orders 1-2001, 4-2001, and 7-2001, premised upon various theories of liability, including Defendant’s alleged failure to: classify the Warehouse Manager position correctly (as well as any same or similar job title or job position); use shift differentials, non-discretionary bonuses, and non-discretionary performance pay to calculate the correct regular rate of pay used to calculate overtime pay; provide compliant meal periods and/or a meal period penalty in lieu of a compliant meal period; provide compliant rest breaks and/or a rest period penalty in lieu of a compliant rest period; pay minimum wages; pay overtime wages; pay wages timely upon termination of employment and associated waiting time penalties; pay wages timely during employment; maintain required payroll records; provide wage statements and/or accurate wage statements; provide reporting time pay; indemnify employees with necessary and reasonable business expenses; and provide one day’s rest in seven.

V. Taxation of Your Individual Settlement Payment

You will be issued an IRS Form 1099 in connection with the funds paid to you via the enclosed check. You are solely responsible for all tax obligations attributable to you that may arise as a result of receiving the settlement check. Should you seek tax advice or have tax questions relating to your receipt of the enclosed check, you should direct them to your own personal tax advisor.

VI. Where to Get More Information

Do not call the Los Angeles Superior Court about this letter, the settlement, the settlement check sent to you, or the Lawsuit in general. If you have questions about this letter, the settlement, the settlement check sent to you, or the Lawsuit in general, you may contact the Settlement Administrator at [insert contact information].

Dated: [insert date]