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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 SANDY MURILLO, an individual, on behalf of
14 herself and on behalf of all persons similarly
15 situated,

16 Plaintiff,

17 vs.

18 7 ELEVEN, INC., a Corporation; and DOES 1
19 through 10, inclusive,

20 Defendants.

21 SANDY MURILLO, on behalf of the State of
22 California, as a private attorney general,
23 Plaintiff,

24 vs.

25 7-ELEVEN, INC., a Corporation; and DOES 1
26 through 10, inclusive,

27 Defendants.

Case No. 37-2020-00043637-CU-OE-CTL
(Consolidated with Case No. 37-2021-00002324-
CU-OE-CTL)

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Hearing Date: May 12, 2023
Hearing Time: 8:30 a.m.

Assigned for all purposes to:
Hon. Ronald F. Frazier, Dept. C65

Complaint Filed: November 30, 2020
Trial Date: None Set

1 The motion of Plaintiff Sandy Murillo (“Plaintiff”) for an order finally approving the Class
2 Action Settlement Agreement (“Agreement”) with Defendant 7 Eleven, Inc. (“Defendant”)
3 attorneys’ fees and costs, service payment, and the fees of the Settlement Administrator duly came
4 on for hearing on May 12, 2023 before the Honorable Ronald F. Frazier.

5
6 **I.**

7 **FINDINGS**

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

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
13 including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of One Million Nine Hundred
16 Ninety Thousand Dollars (\$1,990,000) and the terms set forth in the Agreement are fair,
17 reasonable, and adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount the
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the
22 assistance of an experienced mediator in the settlement process, among other factors, support the
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On October 5, 2022, the Court granted preliminary approval of the Settlement. At
26 this same time, the Court approved conditional certification of the Class for settlement purposes
27 only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
3 by first class mail to members of the Class at their last known addresses on or about December 9,
4 2022. Mailing of the Class Notice to their last known addresses was the best notice option under
5 the circumstances and was reasonably calculated to communicate actual notice of the litigation
6 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
7 accurately informed the Class Members of all material elements of the proposed Settlement and of
8 their opportunity to object to or comment thereon or to seek exclusion from the Settlement; was
9 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the
10 State of California, the United States Constitution, due process and other applicable law. The
11 Class Notice fairly and adequately described the Settlement and provided Class Members adequate
12 instructions and a variety of means to obtain additional information.

13 7. The deadline for opting out of the Class or submitting written objections to the
14 Settlement was March 9, 2022. There was an adequate interval between mailing of the Class
15 Notice and the response deadline to permit Class Members to choose what to do and act on their
16 decision. A full opportunity has been afforded to the Class Members to participate in this hearing,
17 and all Class Members and other persons wishing to be heard have been heard. Class Members
18 also have had a full and fair opportunity to exclude themselves from the proposed Settlement and
19 Class. Accordingly, the Court determines that all Class Members who did not timely and properly
20 submit a request for exclusion are bound by the Settlement and this Final Approval Order and
21 Judgment.

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 parties during an all-day mediation before Michael E. Dickstein, a respected and experienced
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1 mediator of wage and hour class actions. There has been no collusion between the parties in
2 reaching the proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. Four (4) requests for exclusion were received.

9 e. The participation rate was high. 5,177 Class Members will be mailed a
10 settlement payment, representing 99.9% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$673,299 for attorneys' fees, representing one-third of the Gross
20 Settlement Amount, and \$19,844.23 for litigation costs and expenses, is reasonable, in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
23 and billing statement.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
27 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
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1 the risks and burdens undertaken by the Plaintiff in the litigation and for her time and effort in
2 bringing and prosecuting this matter on behalf of the Class.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payment to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
7 issue any required tax reporting forms, calculate withholdings and perform the other remaining
8 duties set forth in the Agreement. The Settlement Administrator has documented \$40,000 in fees
9 and expenses, and this amount is reasonable in light of the work performed by the Settlement
10 Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$250,000, which shall be allocated \$187,500 to the LWDA as the LWDA's 75% share
14 of the settlement of civil penalties paid pursuant to the PAGA and \$62,500 to be distributed to the
15 Aggrieved Employees based on their respective pay periods worked during the PAGA Period
16 (November 30, 2019, through April 27, 2022). The Aggrieved Employees are all all individuals
17 who are or previously were employed by Defendant in California who were classified as non-
18 exempt employees at any time during PAGA Period. The Court finds this PAGA Payment to be
19 reasonable. All Aggrieved Employees will be sent their share of the PAGA Payment and will be
20 subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out
21 of the Settlement.

22
23 **II.**

24 **ORDERS**

25 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

26 1. The certification of the Class for the purposes of settlement is confirmed. The
27 Class is defined as follows:

1 All individuals who are or previously were employed by Defendant in California
2 who were classified as non-exempt employees at any time during the Class Period
3 excluding persons who have previously settled claims otherwise covered by this
4 settlement (November 30, 2016, through April 27, 2022).

5 2. All persons who meet the foregoing definition are members of the Class, except for
6 those individuals who filed a valid request for exclusion (“opt out”) from the Class. The four
7 individuals who are excluded are: Kenyon Ariel Walden, Germaine E. Rizak, Tony Amaral, and
8 Yvette E. Nunez.

9 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
10 best interest of the Class.

11 4. Class Counsel are awarded attorneys' fees in the amount of \$673,299 and costs in
12 the amount of \$19,844.23. Class Counsel shall not seek or obtain any other compensation or
13 reimbursement from Defendant, Plaintiff or members of the Class.

14 5. The payment of the Class Representative Service Payment in the amount of
15 \$10,000 to the Plaintiff is approved.

16 6. The payment of \$40,000 to the Settlement Administrator for their fees and
17 expenses is approved.

18 7. The PAGA Payment of \$250,000 is approved and shall be allocated in accordance
19 with the Agreement.

20 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
21 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
22 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
23 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
24 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
25 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
26 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
27 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
28 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding

1 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
2 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
3 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
4 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
5 Released PAGA Claims.

6 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
7 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
8 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
9 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
10 to individual Class Members.

11 10. If the Agreement does not become final and effective in accordance with the terms
12 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
13 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
14 revert to their respective positions as of before entering into the Agreement, and expressly reserve
15 their respective rights regarding the prosecution and defense of this Action, including all available
16 defenses and affirmative defenses, and arguments that any claim in the Action could not be
17 certified as a class action and/or managed as a representative action.

18
19 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

20 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
21 Plaintiffs, and all members of the Class, shall take nothing in the Action.

22 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
23 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
24 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
25 arising from or in connection with the distribution of settlement benefits.

26 3. The Parties are authorized, without further approval from the Court, to agree to and
27 to adopt such amendments, modifications and expansions of the Agreement and all exhibits

1 attached thereto which are consistent with this Final Approval Order and Judgment and as
2 approved by the Court.

3 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
4 provided in the Agreement and in this Final Approval Order and Judgment.

5 5. Upon the Effective Date, Participating Class Members hereby release, acquit and
6 discharge the Released Parties from all claims rights, demands, liabilities, penalties, wages, and
7 causes of action that were asserted in the operative complaint, or that could have been asserted
8 based on the facts and allegations in the operative complaint, which occurred during the Class
9 Period, including claims for violations of Labor Code sections §§ 201, 202, 203, 204, *et seq.*, 210,
10 226(a), 226.7, 351, 510, 512, 558(a)(1)-(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
11 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and California Code of Regulations,
12 Title 8, Section 1 1070(14) which arose during the Class Period, and expressly excluding all other
13 claims, including claims for vested benefits, wrongful termination, unemployment insurance,
14 disability, social security, workers' compensation, and class claims outside of the Class Period
15 ("Released Class Claims").

16 6. Upon the Effective Date, Defendant shall receive a release from the State of
17 California and the Aggrieved Employees of all claims, rights, demands, liabilities, penalties,
18 wages, and causes of action under the PAGA that were asserted in the operative complaint, or that
19 could have been asserted based upon the on the facts and allegations in the operative complaint,
20 which occurred during the PAGA Period, including PAGA claims predicated on violations of
21 Labor Code sections §§ 201, 202, 203, 204, *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)-
22 (2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
23 Subdivision 5(A)-(B), and California Code of Regulations, Title 8, Section 1 1070(14), which
24 occurred during the PAGA period, and expressly excluding all other claims, including claims for
25 vested benefits, wrongful termination, unemployment insurance, disability, social security,
26 workers' compensation, and class claims outside of the PAGA Period ("Released PAGA
27 Claims"). The release of the Released PAGA Claims shall be effective as to all Aggrieved
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1 Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion
2 from the Class.

3 7. Upon the Effective Date, Plaintiff generally, releases and discharges the Released
4 Parties from any and all claims, transactions or occurrences between them that occurred during the
5 Class Period (“Plaintiff’s Released Claims”) as set forth fully in the Agreement.

6 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

7
8 Dated: _____

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10 _____
HON. RONALD F. FRAZIER
JUDGE, SUPERIOR COURT OF CALIFORNIA