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LAW AND MOTION DEPT 53/54
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ANALISA LEONG-CALL and ERIC
INGALLS, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

MRB FOODS INC., a California Corporation;
SANJAY LILLANEY, an individual;
CONNIE GAMMON, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

Reservation No.: 2612810

CLASS ACTION

CEX
**AMENDED [~~PROPOSED~~] ORDER
GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: October 14, 2020

FAC Filed: December 21, 2020

SAC Filed: November 8, 2021

Trial Date: None Set

1 **DAVID YEREMIAN & ASSOCIATES, INC.**

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7 5500 Bolsa Ave., Suite 201
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8 **Attorneys for Plaintiff ERIC INGALLS**

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 February 10, 2022 at 9:00 a.m., in Department 54
4 before Hon. Christopher E. Krueger, presiding. Named Plaintiff Analisa Leong-Call filed this putative
5 class action on October 14, 2020. The operative Complaint filed on November 8, 2021 to include
6 named Plaintiff Eric Ingalls alleges that Defendants MRB Foods Inc., Sanjay Lillaney and Connie
7 Gammon ("Defendants") are liable for failure to pay minimum wages and for all hours worked, failure
8 to pay overtime, meal period violations, rest period violations, wage statement violations, untimely
9 payment of wages, failure to pay final wages, failure to reimburse expenses, unfair competition, and
10 failure to pay accrued vacation. Plaintiffs have also alleged Defendants are liable for a civil penalties
11 under the Private Attorneys General Act ("PAGA") based on these violations and failure to provide
12 paid sick leave, failure to keep accurate records and unlawfully collecting or receiving wages in
13 violation of Labor Code section 221. Plaintiffs sought attorneys' fees and costs as part of this Action.
14 Defendants denied all of Plaintiffs' claims and denied that this case was appropriate for class
15 treatment. No class has been certified.

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

24 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
25 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

26 The Court finds that certification of the following class for settlement purposes only is
27 appropriate under the California Code of Civil Procedure and related case law:
28

1 Current and former non-exempt employees of Defendants in California
from October 5, 2019 up to November 6, 2021.

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

5 The Court finds that Class Members meet the ascertainability and numerosity requirements since
6 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
7 the definition and the number of Class Members would make joinder impractical. The commonality and
8 predominance requirements are met for settlement purposes since there are questions of law and fact
9 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
10 contentions that Defendants caused the violations outlined above by 1) failing to incorporate the value of
11 nondiscretionary bonuses into putative class members' regular rates of pay for the purpose of calculating
12 overtime wages and paid sick time; 2) failing to pay putative class members for all hours worked,
13 including overtime hours (requiring off the clock work pre and post shift and requiring clock outs for
14 meal periods not taken); 3) contacting putative class members on their personal cellphones during shifts
15 and failing to reimburse for cellphone use; 4) requiring putative class members to use their personal
16 vehicles to drive to other restaurants and make bank deposits and failing to reimburse mileage; 5) failing
17 to authorize and permit all meal and rest periods (missed lunches, late lunches, and no second lunch for
18 shifts over 10 hours); and 6) failing to pay accrued but unused vacation wages upon separation. The
19 PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from
20 these violations. Additionally, Class Members seek the same remedies under state law. The typicality
21 requirement for settlement purposes is also satisfied since the claims of the Class Representatives are
22 based on the same facts and legal theories as those applicable to the class members.

23 The Court also finds that preliminarily and conditionally certifying the settlement class is
24 required to avoid each Class Member from litigating similar claims individually. This settlement will
25 achieve economies of scale for Class Members with relatively small individual claims and conserve the
26 resources of the judicial system.

27 The Court finds that Plaintiffs Analisa Leong-Call and Eric Ingalls and Plaintiffs' counsel, Galen
28 T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of the Shimoda Law Corp., David Yeremian

1 and Alvin B. Lindsay of David Yeremian and Associates, Inc., and Walter Haines of United Employees
2 Law Group PC to be adequate representatives of the settlement class. The Court appoints them as class
3 representative and class counsel, respectively.

4 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit
6 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of
7 a settlement, which could ultimately be given final approval by this Court. The Court also
8 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
9 Court or opt-out of being bound by the preliminarily approved Agreement.

10 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
11 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
12 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
13 \$200,000 Gross Settlement Amount.

14 The Court orders that Plaintiffs Analisa Leong-Call and Eric Ingalls will receive \$10,000 each as
15 a Class Representative Enhancement Payment in addition to any amount Plaintiffs may be entitled to
16 under the Agreement's pro rata distribution formula for Plaintiffs' time and effort on behalf of Class
17 Members.

18 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
19 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
20 \$15,000. Any difference between the actual cost of the Claims Administrator and the approved payment
21 will be redistributed to Qualified Claimants on a pro-rata basis.

22 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
23 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
24 accurately traced as set forth in the Agreement, Plaintiffs and Class Counsel were able to negotiate on
25 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
26 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
27 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
28 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of

1 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.* \$70,000, to be appropriate compensation
2 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
3 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
4 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
5 the course of this case, which included potential loss at summary judgment, certification, and/or trial
6 proceedings. Additionally, the Court orders that up to \$22,000 of the settlement proceeds will be paid to
7 Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs
8 incurred and the \$22,000 shall be paid to the Qualified Claimants on a pro-rata basis.

9 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000) PAGA Payment,
10 which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount,
11 to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to
12 the Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid
13 to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that the
14 Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-
15 compliance, furthering the purpose of the Labor Code and LWDA.

16 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
17 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
18 paid out 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights.

19 The releases and waivers for Class Members who do not opt out of being bound by the
20 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representatives are also
21 approved by the Court as set forth in the Agreement.

22 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
23 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

24 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiffs'
25 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
26 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
27 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
28 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness

1 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
2 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
3 at his or her most recent address based on a National Change of Address database search from the Class
4 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
5 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
6 including those of due process.

7 The Court also finds that because there is a strong interest in providing Class Members the
8 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
9 privacy rights, the sharing of employment information, including social security numbers, is not a
10 serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last
11 name, last known mailing address, social security number, hire and termination dates, total number of
12 workweeks during which the Class Member performed any actual work to the Claims Administrator
13 only, and not to Plaintiffs or Class Counsel, in order to process this settlement as contemplated within
14 the Agreement and approved by this Order. The Claims Administrator shall only use this information
15 for settlement purposes identified herein, and this information shall be kept confidential, not be shared
16 with any third-party, and used only to administer the settlement.

17 4. IMPLEMENTATION SCHEDULE

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

20 Last day for Defendants to provide Claims 21 Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
22 Last day for Claims Administrator to complete 23 NCOA search, update Class Member mailing 24 information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
25 Last day for Class Members to opt-out, submit 26 disputes, submit objections, and submit data 27 requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later

1	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
2		
3		
4	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 days after the Final Approval Date
5		
6		
7		
8	Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
9		
10		
11	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days of the settlement being funded
12		
13		
14		
15	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
16		
17		
18	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
19		
20		
21	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline
22		

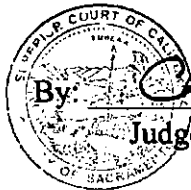
FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiffs' Motion and sets final approval hearing on the proposed date of June 7, 2022 at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. 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.

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

6 **IT IS SO ORDERED.**

7
8 Date: 2-16-2022



By: Christopher E. Krueger

Judge of the Superior Court

CHRISTOPHER E. KRUEGER

1 *Leong-Call v. MRB Foods, Inc.*
2 *Sacramento County Superior Court of California 34-2020-00287486*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On February 9, 2022, I served the following documents on the party below:

- 9 • Amended [PROPOSED] Order Granting Plaintiff's Motion for Preliminary
10 Approval of Class Action and PAGA Settlement

11 Laura A. Wolfe (SBN: 266751)

12 McCormick Barstow LLP

13 7647 North Fresno Street

14 Fresno, CA 93720

15 Telephone: (559) 433-2160

16 Facsimile: (559) 433-2300

17 Email: Laura.Wolfe@mccormickbarstow.com

18 Alvin Lindsay (SBN: 220236)

19 David Yermian (SBN: 226337)

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21 535 N. Brand Blvd., Ste. 705

22 Glendale, CA 91203-1989

23 Telephone: (818) 230-8380

24 Facsimile: (818) 230-0308

25 Email: alvin@yermianlaw.com

26 david@yermianlaw.com

27 [XXX]

[By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

28 []

[By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

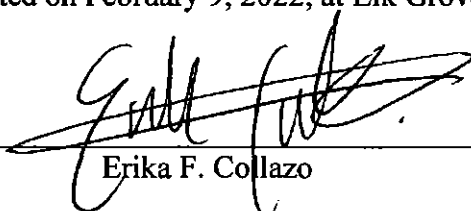
[]

[By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[]

[By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: UPS.

29 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 2022, at Elk Grove, California

30 
31 Erika F. Collazo