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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRADLEY LUTAT, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

BARRY'S BOOTCAMP, LLC, a California
Limited Liability Company; BARRY'S SAN
DIEGO LLC, a California Limited Liability
Company; BARRY'S BAY AREA, LLC, a
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

CASE NO.: **37-2020-00044771-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: September 16, 2022
Hearing Time: 9:00 a.m.

Judge: Hon. Eddie C. Sturgeon
Dept.: 67

Action Filed: December 7, 2020
Trial Date: None Set

1 This matter, having come before the Honorable Eddie C. Sturgeon of the Superior Court of
2 the State of California, in and for the County San Diego, on September 16, 2022, for the motion
3 by Plaintiff Bradley Lutat (“Plaintiff”) for preliminary approval of the class settlement with
4 Defendants Barry’s Bootcamp, LLC; Barry’s Bootcamp San Diego, LLC; Barry’s Bay Area, LLC
5 (“Defendants”). The Court, having considered the briefs, argument of counsel and all matters
6 presented to the Court and good cause appearing, hereby GRANTS Plaintiff’s Motion for
7 Preliminary Approval of Class Action Settlement.

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9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Class Action Settlement Agreement
11 (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
12 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based on the
13 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
14 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
15 and California Rules of Court, rule 3.769.

16 2. The Court hereby grants the parties’ stipulation to allow Plaintiff, for settlement
17 purposes only, to file a First Amended Complaint (“FAC”) to allege as class claims all claims
18 alleged in the original Complaint and PAGA letter and allege PAGA claims for all theories
19 asserted in Complaint and PAGA Letter, which Plaintiff shall file forthwith.

20 3. This Order incorporates by reference the definitions in the Agreement, and all
21 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

22 4. The Gross Settlement Amount is Seven Hundred Thousand Dollars (\$700,000). It
23 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate
24 and reasonable as to all potential Class Members when balanced against the probable outcome of
25 further litigation and the significant risks relating to certification, liability and damages issues. It
26 further appears that investigation and research have been conducted such that counsel for the
27 Parties are able to reasonably evaluate their respective positions. It further appears to the Court
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1 that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid
2 the delay and risks that would be presented by the further prosecution of the Action. It further
3 appears that the Settlement has been reached as the result of serious and non-collusive, arms-
4 length negotiations. The Court therefore preliminarily finds that the Settlement is fair, adequate,
5 and reasonable when balanced against the probable outcome of further litigation and the
6 significant risks relating to certification, liability, and damages issues.

7 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
8 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$15,000, and
9 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
10 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
11 any service award, until the Final Approval Hearing.

12 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to
13 certification of a class for settlement purposes only. This stipulation will not be deemed
14 admissible in this or any other proceeding should this Settlement not become final. For settlement
15 purposes only, the Court conditionally certifies the following Class: "all individuals who worked
16 for Defendants in California as non-exempt employees at any time during the Class Period." The
17 Class Period is October 1, 2019 through August 12, 2021.

18 7. The Court concludes that, for settlement purposes only, the Class meets the
19 requirements for certification under section 382 of the California Code of Civil Procedure in that:
20 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
21 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
22 community of interest amongst the members of the Class with respect to the subject matter of the
23 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
24 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
25 action is superior to other available methods for the efficient resolution of this controversy; and (f)
26 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
27 representative of the Class.

1 8. The Court provisionally appoints Plaintiff as the representative of the Class. The
2 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
3 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

4 9. The Court hereby approves, as to form and content, the Notice of Proposed
5 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
6 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
7 accurately inform the Class of all material elements of the proposed Settlement, of the Class
8 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
9 member’s right and opportunity to object to the Settlement. The Court further finds that the
10 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
11 and this Order meets the requirements of due process, is the best notice practicable under the
12 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
13 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
14 the Agreement.

15 10. The Court hereby appoints ILYM Group as Settlement Administrator. No later
16 than fourteen (14) calendar days after preliminary approval of the Settlement by the Court,
17 Defendant shall provide to the Settlement Administrator an electronic spreadsheet with the Class
18 Data. The Settlement Administrator will perform address updates and verifications as necessary
19 prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no
20 event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the
21 Class Notice Packets to all Class Members via first-class U.S. Mail.

22 11. The Court hereby preliminarily approves the proposed procedure for exclusion
23 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
24 from the Class as provided in the Class Notice by following the instructions for requesting
25 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
26 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
27 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
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1 response date for requests for exclusion will be extended an additional 15 days. Any such person
2 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
3 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
4 comment thereon. Class Members who have not requested exclusion shall be bound by all
5 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only
6 opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass
7 of individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of
8 the Settlement, the Aggrieved Employees will be paid their allocation of the PAGA Payment and
9 will remain subject to the release of the Released PAGA Claims in the Agreement regardless of
10 their request for exclusion.

11 12. Any Class Member who has not opted out may appear at the final approval hearing
12 and may object or express the Member's views regarding the Settlement, and may present
13 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
14 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
15 calendar days from the date of the mailing of the Class Notices to submit their written objections
16 to the Settlement Administrator in accordance with the instructions in the Class Notice. If the
17 Class Notice Packet is re-mailed, the response date for written objections will be extended an
18 additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to
19 make an oral objection.

20 13. A Final Approval Hearing shall be held before this Court on _____
21 _____ at _____ in Department 67 at the San Diego County Superior Court to
22 determine all necessary matters concerning the Settlement, including: whether the proposed
23 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
24 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
25 Order and Judgment should be entered herein; whether the plan of allocation contained in the
26 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
27 finally approve attorneys' fees and costs, the service award, and the expenses of the Settlement
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1 Administrator. All papers in support of the motion for final approval and the motion for attorneys'
2 fees, costs and service award, both to be heard at the Final Approval Hearing, shall be filed with
3 the Court and served on all counsel no later than sixteen (16) court days before the hearing.

4 14. Neither the Settlement nor any exhibit, document, or instrument delivered
5 thereunder shall be construed as a concession or admission by Defendants in any way that the
6 claims asserted have any merit or that this Action was properly brought as a class or representative
7 action, and shall not be used as evidence of, or used against Defendants as, an admission or
8 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
9 omission by Defendants or with respect to the truth of any allegation asserted by any person.
10 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
11 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
12 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
13 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,
14 evidence of a presumption, concession, indication or admission by Defendants of any liability,
15 fault, wrongdoing, omission, concession or damage.

16 15. In the event the Settlement does not become effective in accordance with the terms
17 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
18 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
19 and the Parties shall revert to their respective positions as of before entering into the Agreement,
20 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
21 including all available defenses and affirmative defenses, and arguments that any claim in the
22 Action could not be certified as a class action and/or managed as a representative action. In such
23 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
24 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
25 the Agreement with respect to the effect of the Agreement if it is not approved.

26 16. The Court reserves the right to adjourn or continue the date of the final approval
27 hearing and all dates provided for in the Agreement without further notice to Class Members, and
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 17. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

8 HON. EDDIE C. STURGEON
9 JUDGE, SUPERIOR COURT OF CALIFORNIA

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