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13 MARVIN MANN, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SANTA CLARA**

16 **(UNLIMITED JURISDICTION)**

17 MARVIN MANN, on behalf of himself, and all
18 others similarly situated,

19 *Plaintiff(s),*

20 vs.

21 WALNUT BREWERY, INC., a Colorado
22 corporation doing business as Rock Bottom
23 Brewery; SPB HOSPITALITY, LLC, a
24 Delaware limited liability company; and DOES
1-50, inclusive,

25 *Defendants.*

Case No.: 21CV377897

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Action filed: March 10, 2021

Dept: 3, The Honorable Patricia
M. Lucas



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1 Plaintiff Marvin Mann's ("Plaintiff") unopposed Motion for Preliminary Approval of
2 Joint Stipulation of Class Action Settlement was scheduled for hearing before the Court on June
3 22, 2022, before the Honorable Patricia M. Lucas Judge presiding.

4 The Court, having considered the Joint Stipulation of Class Action Settlement
5 ("Settlement"), executed by the Parties on March 28, 2022 and attached as Exhibit 1 to the
6 Declaration of David Spivak filed on May 31, 2022, and the exhibits attached thereto; having
7 considered Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement,
8 memorandum of points and authorities, supporting declarations filed therewith, and good cause
9 appearing thereto, HEREBY ORDERS THE FOLLOWING:

10 1. The Court grants preliminary approval of the Settlement and the Class based
11 upon the terms set forth in the Settlement filed previously. All capitalized terms used herein shall
12 have the same meaning as defined in the Settlement. The Court has determined there is sufficient
13 evidence to suggest that (a) the terms of the Settlement might be fair, adequate, and reasonable to
14 the Class and (b) the Settlement falls within the range of reasonableness and appears to be
15 presumptively valid, subject only to any objections that may be raised at the final hearing and
16 final approval by this Court. The Court will make a determination at the Final Approval Hearing
17 of whether the Settlement is fair, adequate and reasonable to the Class.

18 2. For purposes of this Order, the Class is defined as follows:

19 The "Class" or "Class Members" means all persons Defendants employed as hourly,
20 non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in
21 Campbell, California, during the Class Period. "Class Member" means a single, non-
22 exempt employee who worked for Defendants in California during the Class Period.
"Class Period" means the time from June 1, 2020, to October 20, 2021.

23 The Class is preliminarily certified for settlement purposes only.

24 3. The Court hereby preliminarily finds that the Settlement was the product of
25 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making
26 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
27 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
28 of Settlement proceeds to the Class, and the fact that the Settlement represents a compromise of
the Parties' respective positions. The Court further preliminarily finds that the terms of the



1 Settlement have no obvious deficiencies and do not improperly grant preferential treatment to
2 any individual Class Member. Accordingly, the Court preliminarily finds that the Settlement was
3 entered into in good faith.

4 4. The Court finds that the dates set forth in the Settlement for mailing and
5 distribution of the Class Notice meet the requirements of due process and provide the best notice
6 practicable under the circumstances and constitute due and sufficient notice to all persons entitled
7 thereto, and directs the mailing of the Class Notice by first class mail to the Class as set forth in
8 the Settlement. Accordingly, the Court orders the following implementation schedule for further
9 proceedings:

10 a. Within fourteen (14) calendar days following the date of this Preliminary
11 Approval Order, Defendants shall provide Phoenix Class Action Administration Solutions the
12 appointed Settlement Administrator, with the following information about each Class Member:
13 (1) name; (2) last known mailing address; (3) Social Security Number; (4) and dates of
14 employment.

15 b. Within fourteen (14) calendar days after the receipt of the class data, the
16 Settlement Administrator shall be responsible for calculating the estimated payouts to the Class
17 Members assuming all Class Members participate in the Settlement. The duties of the Settlement
18 Administrator are stated in Section III.C of the Settlement.

19 c. Within fourteen (14) calendar days after the receipt of the class data, the
20 Settlement Administrator shall mail the Class Notice to all Class Members pursuant to the terms
21 of the Settlement, by First Class regular U.S. mail. Prior to mailing, the Settlement Administrator
22 will perform a search based on the National Change of Address Database for information to
23 update and correct any known or identifiable address changes.

24 d. Within sixty (60) calendar days following the mailing of the Class Notice,
25 all requests to be excluded from the Settlement must be returned to the Settlement Administrator
26 postmarked by U.S. Mail, as set forth in the Settlement. The Class Notice shall include a Request
27 for Exclusion Form that the Class Members may use for this purpose. The Settlement



1 Administrator shall file a declaration concurrently with the filing of any motion for final approval
2 of the Settlement authenticating a copy of every Request for Exclusion Form received by the
3 Settlement Administrator.

4 e. Within sixty (60) calendar days following the mailing of the Class Notice,
5 all written objections to the Settlement should be mailed to the Settlement Administrator and
6 should state the basis for the objection. The Class Notice shall include an Objection Form that
7 the Class Members may use for this purpose. The Settlement Administrator shall forward a copy
8 of the objection to counsel for the parties within two (2) business days of receipt. The Settlement
9 Administrator shall file a declaration concurrently with the filing of any motion for final approval
10 of the Settlement authenticating a copy of every Objection Form received by the Settlement
11 Administrator. The Court will consider any written or oral objections or comments from Class
12 Members at the time of the Final Approval Hearing, as set forth in the Class Notice. Class
13 Members may appear at the final approval hearing to be heard on their objections, even if they
14 have not previously served a written objection.

15 5. The Court approves, as to form and content, the Notice of Proposed Class Action
16 Settlement and Hearing Date for Court Approval, Election Not to Participate in Settlement form,
17 and Paycheck Dispute Form (collectively the "Class Notice"), attached as Exhibits A, B, and C
18 to this Order. The Court also approves the procedure for members of the Class to object to the
19 Settlement set forth in the Notice.

20 6. The Court approves, for settlement purposes only, Walter Haines of United
21 Employees Law Group and David Spivak of The Spivak Law Firm as Class Counsel.

22 7. The Court approves, for settlement purposes only, Plaintiff Marvin Mann as the
23 Class Representative.

24 8. The Court approves Phoenix Class Action Administration Solutions as the
25 Settlement Administrator and orders Phoenix Class Action Administration Solutions to perform
26 the duties described in Paragraph 4 and its subparts.

27 9. A Final Approval Hearing shall be held at _____ a.m./p.m. on
28 _____, 2022 in Department 3 of the Superior Court for the State of California,



County of Santa Clara, located at 1095 Homestead Road Santa Clara, CA 95050, to consider the fairness, adequacy, and reasonableness of the proposed Settlement preliminarily approved by this Order, and to consider the application of Class Counsel for an award of reasonable attorneys' fees and costs incurred and the Class Representative Payment. All briefs and materials in support of the Motion for an Order of Final Approval and Judgment and Application for Attorneys' Fees and Costs shall be filed with this Court sixteen (16) court days prior to the final approval hearing.

10. If for any reason the Court does not execute and file an Order of Final Approval and Judgment, or if the Final Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this Order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

11 The Court expressly reserves the right to adjourn or continue the Fairness Hearing from time to time without further notice to members of the Class. The Settlement Administrator shall give prompt notice of any continuance to Class Members who object to the Settlement.

IT IS SO ORDERED.

DATED: _____

Honorable Patricia M. Lucas
Judge of the Santa Clara Superior Court



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THE
SPIVAK
LAW FIRM