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12 **Attorneys for Plaintiff REBECCA DALTON**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF ORANGE**

15 **COMPLEX JUSTICE CENTER**

16 **REBECCA DALTON, INDIVIDUALLY)**
17 **AND ON BEHALF OF OTHERS)**
18 **SIMILARLY SITUATED, AND ON)**
19 **BEHALF OF THE PEOPLE OF THE)**
20 **STATE OF CALIFORNIA, ROES 1-20,)**

21 **v.)**

22 **STUBRIK'S STEAKHOUSE, WFO, ENT.)**
23 **GROUP, INC.; DENNIS RAINEY; CRAIG)**
24 **VOORTING; DOES I through X, inclusive,)**

25 **Defendants.**

26 **CASE NO. 30-2021-01177894-CU-OE-CX**
27 **DATE FILED: January 8, 2021**
28 **COURTROOM: CX 102**
JUDGE: PETER WILSON

ORDER AND JUDGMENT APPROVING
PAGA SETTLEMENT, NOTICE TO
AGGRIEVED EMPLOYEES AND
DISTRIBUTION OF THE GROSS PROCEEDS
OF SETTLEMENT

Date: November 11, 2021
Time: 2:00 PM
Dept: CX 102

29 The Motion for Approval of PAGA Settlement Notice to Aggrieved Employees and Distribution of
30 the Gross Proceeds of Settlement by Plaintiff Rebecca Dalton came regularly on calendar on November
31 11, 2021, in Department CX 102, before the Honorable Peter Wilson, Judge. Appearing for the moving
32 party was counsel of record, Maurice Mandel II. Defendants (did not appear) (appeared through counsel

1 Klatte, Budensiek & Young-Agriesti, LLP., Summer Young-Agriesti, Esq.) The court notes the LWDA
2 was timely served with the moving papers and notice of this motion yet did not file any objections or
3 opposition to this motion.

4 The case at issue includes a number of non-PAGA, individual claims by Plaintiff Rebecca Dalton
5 (Plaintiff) against her former employer, including claims arising under the California Fair Employment
6 and Housing Act (FEHA or FEHA claims); and wage claims under both the California Labor Code and
7 the California Unfair Competition Law (UCL), in a complaint filed January 8, 2021. Plaintiff filed a First
8 Amended Complaint (FAC), on March 29, 2021, which is the operative pleading, and which included an
9 additional Representative claim for violations of the California Labor Code pursuant to the California
10 Private Attorneys General Act (PAGA). Plaintiff's instant motion, and other associated filings followed.
11 In these papers, the parties established that the statutory requirements of a PAGA claim and settlement
12 were properly met (Mot. at pp 6-7), explained why the proposed settlement is fair and reasonable (*id.* at pp
13 8-17), and provided support for the requested proposed distributions, including the attorney's fees and
14 costs.

15 Having considered the parties' Settlement Agreement ("Settlement"), the documents and evidence
16 presented in support thereof, and recognizing the disputed factual and legal issues involved in this case,
17 the risks of further prosecution, the benefits to be received by the State of California and the Aggrieved
18 Employees pursuant to the Settlement, the fair, reasonable, and adequate nature of the settlement obtained
19 as a result of good faith arm's-length negotiations between the parties, with the participation of an
20 independent and experienced employment mediator, the Court hereby makes a final ruling that the
21 settlement is approved pursuant to Labor Code § 2699(l); and approves the proposed individual settlement
22 distribution to Plaintiff Rebecca Dalton and her attorney's of record, PAGA payment, distribution of
23 PAGA proceeds to Aggrieved Employees, Notice of PAGA settlement to Aggrieved Employees, and
24 payment to the settlement administrator, Phoenix Settlement Administrators, as more fully ordered below..

1 Good cause appearing therefor, the Court hereby GRANTS Plaintiff's Motion for Settlement
2 Approval of Claims Brought under the Private Attorneys General Act and Reasonable Attorneys' Fees,
3 Costs, and Enhancement Award and ORDERS as follows:
4

5 **IT IS ORDERED, ADJUDGED AND DECREED:**

- 6 1. Definitions:
- 7 a. "Aggrieved Employees" shall be defined as all persons employed by the Employer in the
8 capacity of a server or bartender, during the time period of December 20, 2019 to March
9 29, 2021. FAC ¶48 (p 15) There are 22 such Aggrieved Employees.
- 10 b. The "PAGA period" is from December 19, 2019 to March 29, 2021 for determination of
11 the Aggrieved Employees and the Released Claims. FAC ¶48 (p 15)
- 12 c. The "Alleged PAGA Violations" are found in the FAC, 6th cause of action, pages 15-19:
- 13 i. Alleged violations of Labor Code (LC) § 202- failure to pay all wages owed at the
14 time or within 72 hours of termination or quitting. ¶54
- 15 ii. Alleged violations of LC § 206.5- requiring employees to create false time records
16 by punching the time clock while continuing to work. ¶ 55.
- 17 iii. Alleged violations of LC § 226 (a)- failing to provide accurate statements of
18 earnings with each paycheck, penalty proscribed in LC § 226.3. ¶ 56-57
- 19 iv. Alleged violations of LC § 510- failing to pay overtime premium pay. ¶ 59
- 20 v. Alleged violations of LC § 558 and 558.1- failing to pay overtime premium pay. ¶
21 60
- 22 vi. Alleged violations of LC § 1174- failing to keep accurate records, with a penalty
23 proscribed by LC § 1174.5- ¶61
- 24 vii. Alleged violations of LC § 1198- working overtime hours without being paid
25 overtime premium pay- ¶62
- 26
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- viii. Alleged violations of LC § 1199- working more than 8 hours a day or 40 hours a week without being paid overtime premium pay- ¶ 63
- ix. Alleged violations of LC § 221 and 223- by requiring wait staff to “cover” refused or disputed credit card charges by a customer from the earnings of the wait staff, and/or requiring wait staff to pay for refused meals if there was an error by the wait staff- ¶65
- d. “Defendant Releasees” means Defendants and their respective agents, attorneys, insurers, past, present and future divisions, affiliates, any DBAs, predecessors, successors, shareholders, officers, directors, managers, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under or in concert with any of them.
- e. “Gross Settlement Amount” refers to the maximum settlement amount of **\$85,000.00** agreed to by the parties at the mediation held on August 30, 2021 with an independent mediator. The Gross Settlement amount includes all monies for payment of both Plaintiff’s individual claims and the PAGA payments to the LWDA and the Aggrieved Employees.
- f. “LWDA” means the Labor and Workforce Development Agency of the state of California.
- g. “PAGA Notice” means the notice to the Aggrieved Employees submitted by Plaintiff and approved by this Order.
- h. “Gross PAGA settlement” means the \$1000.00 paid by Defendants in settlement of the PAGA claims, and includes the \$750.00 paid to the LWDA, and the \$250.00 paid to the Aggrieved Employees.
- i. “Released Claims” means those claims released by the Aggrieved Employees.
2. The Court finds the applicable requirements of the California Code of Civil Procedure §

1 382 and California Rules of Court, Rule 3.769 have been satisfied with respect to the Settlement; the
2 LWDA; and the Aggrieved Employees.

3 3. The Court approves Plaintiff Rebecca Dalton to serve as representative of the PAGA
4 group.
5

6 4. The Court appoints and approves the law firms of William M. Crosby, Esq.; and Maurice
7 Mandel II, Esq., to serve as Representative Counsel for the represented PAGA group.

8 5. The Court has appointed Phoenix Settlement Administrators (Phoenix) to serve as the
9 Claims Administrator.

10 6. The Court finds that the Notice of PAGA Settlement- 1. Fully and accurately informs the
11 members of the PAGA group of all material terms of the Settlement, 2. Was the best notice practicable
12 under the circumstances, 3. Was valid, due and sufficient notice to all members of the PAGA group, 4.
13 Fully complied with the laws of the State of California, the United States Constitution, due process and
14 other applicable law.
15

16 7. Pursuant to California law, the Court hereby grants Approval of the Settlement, and finds it
17 reasonable and adequate and in the best interests of the PAGA group as a whole. More specifically, the
18 Court finds:
19

- 20 a. The Settlement was reached following meaningful discovery and investigation conducted
21 by Representative Counsel,
22 b. The Settlement is the result of serious, informed, adversarial and arms length negotiations
23 between the Parties (assisted by an independent, neutral mediator), and
24 c. The terms of the Settlement are in all respects, fair, adequate and reasonable. In so finding,
25 the Court has considered all the Evidence presented, including evidence regarding the
26 strength of Plaintiffs' cases, the risk, expense and complexity of the claims presented, the
27 likely duration of further litigation, the monetary payments provided in the Settlement, the
28

1 extent of investigation and discovery completed, and the experience and views of Class
2 Counsel. The Court has further considered the fact that there have been no objections or
3 Opposition to the Settlement from the represented parties or the LWDA, and that the
4 LWDA was provided notice of this hearing and the moving papers.
5

6 8. The court concludes that the **\$85,000.00** gross settlement, as approved, is fair, adequate and
7 reasonable, and approves the following specific awards:

- 8 a. The Court notes that Plaintiff Rebecca Dalton has waived an enhancement award for the
9 PAGA recovery; and approves the distributions to Plaintiff Dalton of **\$1,500.00** as regular
10 wages, subject to withholding and employment taxes, reported on a W-2 (prepared by the
11 Defendants), and **\$51,023.89** as general damages for the alleged violations of the FEHA,
12 and for interest, and penalties for violations of the Labor Code and UCL. (Unfair
13 Competition Law; Bus.&Prof. Code §§ 179200 et. seq.), reported on a 1099. The
14 Settlement Administrator is relieved of duties in handling these distributions which shall be
15 sent from the Defendants directly to William M. Crosby, counsel for Plaintiff Dalton.
16
17 b. **\$3326.11** to plaintiffs' counsel for plaintiffs' attorney costs, as requested. The Settlement
18 Administrator is relieved of duties in handling this distribution which shall be sent from the
19 Defendants directly to William M. Crosby, counsel for Plaintiff Dalton.;
20
21 c. **\$28,000.00** as attorney's fees, for representation of the individual Plaintiff, Rebecca
22 Dalton, on her individual claims for violation of the FEHA, the UCL, and the Labor Code.
23 The Court notes that counsel has waived any fee for representation of the PAGA group.
24 The Court finds these amounts are fair and reasonable given the work performed by
25 Plaintiff's counsel on the individual claims, the complexity and novelty of the issues
26 presented, the significant risks incurred in handling this matter on a contingency basis and
27 advancing substantial costs without any guarantee of reimbursement or recovery, and in
28

consideration of conducting an investigation and a recovery for the PAGA group, without seeking additional compensation therefore. The Settlement Administrator is relieved of duties in handling this distribution which shall be sent from the Defendants directly to William M. Crosby, counsel for Plaintiff Dalton.

- d. **\$150.00** to the Administrator, Phoenix Settlement Administrators, as requested; and
- e. **\$750.00** to the LWDA for its share of the gross amount of \$1000.00 PAGA penalties, as requested.
- f. The aggrieved employees, numbering 22, shall receive a proportionate share of the **\$250.00** for PAGA penalties that is not paid to the LWDA; on a per capita basis. The payment will be about **\$11.36** per person. This shall be distributed by the administrator, on information provided by the employer.

9. Any interest accumulated while funds were on deposit with the Settlement Administrator shall be distributed proportionately.

ORDERS TO DEFENDANTS AND SETTLEMENT ADMINISTRATOR RE: DISTRIBUTIONS

10. Based on the foregoing, it is hereby ORDERED that Defendants shall make the following payments and reports:

- a. A payroll check, with applicable deductions accompanied by a W-2, payable to Rebecca Dalton in the gross amount of **\$1,500.00**, delivered to counsel William M. Crosby, within 10 days of service of this signed Order.
- b. A check payable to Rebecca Dalton in the amount of **\$51,023.89**, accompanied by a 1099, delivered to counsel William M. Crosby, within 10 days of service of this signed Order.
- c. A check payable to William M. Crosby in the amount of **\$31,326.11**, accompanied by a 1099, delivered to counsel William M. Crosby for attorney's fees and costs, within 10 days of service of this signed Order.

- 1 d. A check payable to Phoenix Settlement Administrators in the amount of **\$150.00** for
2 administration fees and costs, within 10 days of service of this signed Order.
- 3 e. A check payable to Phoenix Settlement Administrators in the amount of **\$1,000.00** for
4 distribution to the LWDA and the Aggrieved Employees for PAGA penalties, within 10
5 days of service of this signed Order.
- 6 f. Within ten (10) business days of service of this signed Order, Defendant shall provide the
7 Settlement Administrator with information for Aggrieved Employees. Defendant will in
8 good faith compile from its records a list of Aggrieved Employees that will be in a
9 computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each
10 Aggrieved Employee's full name, last known mailing address, and Social Security number.

11 11. Within twenty (20) days of receipt of the check and the list of Aggrieved Employees,
12 Phoenix shall mail each member of the settlement class a check in the amount of the per capita share of
13 the **\$250.00** plus any accrued interest, representing 100% of the total payment to the member, along with a
14 1099 (if required by IRS regulations given the amount of the check). These checks shall remain
15 negotiable for a period of 180 days from the date of mailing and shall carry a legend as follows: "*By*
16 *endorsing and cashing or depositing this check, I consent to the PAGA settlement in Dalton v Stubrik's*
17 *Steakhouse, et al., 30-2021-01177894-CU-OE-CX; elect to participate in the settlement; and agree to the*
18 *release of the PAGA Related Claims covered by the Settlement.*"

19 12. It is hereby further Ordered that Phoenix shall issue a penalty payment to the LWDA in the
20 amount of **\$750.00**. The Penalty payment, shall be mailed to the Department of Industrial Relations,
21 Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA, 94102.

22 13. Any settlement checks issued to the Aggrieved Employees, which are not cashed within
23 180 days, shall be voided and the funds delivered to the State Controller's Office Unclaimed Property
24 Fund in the names of the applicable payees.

1 14. It is hereby further ORDERED that Phoenix- as Claims Administrator- shall issue a check
2 to itself in the amount of **\$150.00** for the services performed and costs incurred for sending notices to the
3 Settlement Class and administering the Settlement.
4

5 **JUDGMENT**

6 15. With this final approval of the Stipulation for Settlement and Releases, the Court hereby
7 enters JUDGMENT by which:

- 8 a. Each member of the Aggrieved Employees shall be conclusively determined to have given
9 a release of the claims of “Alleged PAGA violations” against the Defendant Releasees as
10 set forth in Section 1c, in the “Definitions” above;
11
12 b. Each member of the PAGA Group shall be conclusively determined to have given a release
13 of the PAGA Released Claims against the Defendant Releasees as set forth in the Section
14 1c, in the “Definitions” above;
15
16 c. Plaintiff, as the PAGA Representative, shall be conclusively determined to have given a
17 release of any of the PAGA Representative Released Claims against the Defendant
18 Releasees as set forth in the Section 1c, in the “Definitions” above;
19
20 d. Plaintiff, as an individual claimant making claims against the Defendant Releasees, other
21 than any PAGA claim, shall be conclusively determined to have given a Personal Release
22 of “Personal Release” means the Plaintiff’s irrevocable and unconditional release, acquittal,
23 and discharge of the Released Persons and all persons and/or corporate entities acting by,
24 through, under or in concert with any of them, or any of them, from any and all complaints,
25 claims, liabilities, obligations, promises, agreements, controversies, damages, costs, losses,
26 debts and expenses (including attorneys’ fees and costs actually incurred), of any nature
27 whatsoever, including but not limited to the release of any and all claims arising under any
28 of the following, as amended: the National Labor Relations Act (“NLRA”), Title VII of the

1 Civil Rights Act of 1964, Sections 1981 through 1988 of Title 42 of the United States
2 Code, the Employee Retirement Income Security Act of 1974 (“ERISA”), the Americans
3 with Disabilities Act of 1990 (“ADA”), the Fair Labor Standards Act (“FLSA”), the
4 Occupational Safety and Health Act (“OSHA”), the Consolidated Omnibus Budget
5 Reconciliation Act of 1985 (“COBRA”), the Genetic Information Nondiscrimination Act
6 (“GINA”), the Family and Medical Leave Act (“FMLA”), the Worker Adjustment and
7 Retraining Notification Act (“WARN”), the California Fair Employment and Housing Act
8 (“FEHA”), the Family and Medical Leave Act of 1993 (“FMLA”) and the California
9 Family Rights Act (“CFRA”), the Private Attorneys’ General Act (“PAGA”), the California
10 Worker Adjustment and Retraining Notification Act (“Cal-WARN”), the California
11 Business and Professions Code, including the Unfair Competition Law, Cal. Bus. & Prof.
12 Code § 17200, the California Minimum Wage Law, the Equal Pay Law for California, the
13 California Labor Code (including specifically, Section 132a) and California Wage Orders,
14 together with any alleged violation of the United States or any state Constitution, any local,
15 state or federal law, regulation or ordinance, and/or public policy, contract or tort or
16 common-law, any claim for injunctive or declaratory relief any violation of the penal code,
17 and any other claim whether cognizable at law or in equity having any bearing whatsoever
18 on Plaintiff’s application for employment, employment with, or separation of employment
19 from the Defendant Releasees, which Plaintiff ever had, now has, or shall have, from the
20 beginning of time to the date of the entry of this Order and Judgment.

- 21
22
23
24 e. As part of the Personal Release by Plaintiff, the Plaintiff also waives the benefit of *Civil*
25 *Code* §1542, which provides:

26
27 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
28 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***

1 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
2 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
3 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
4 ***DEBTOR OR RELEASED PARTY***

5 16. After entry of this Final Approval Order and Judgment, pursuant to California Rules of Court,
6 Rule 3.769(h), this Court shall retain jurisdiction to construe, interpret, implement and enforce the
7 Settlement and to supervise and adjudicate any issues regarding the distribution of the Settlement
8 benefits.

9 17. Notice of the entry of this Final Approval Order and Judgment, required Pursuant to CA Rule
10 of Court, Rule 3.771(b) shall be given to the Settlement Class by enclosing a copy of the Final Approval
11 Order and Judgment with the checks being sent to the members of the Settlement Class.

12 18. The Court Clerk is ORDERED to electronically serve a copy of this signed Final Approval
13 Order and Judgment upon the attorneys for all remaining, non-dismissed parties.

14 19. Class Counsel are ORDERED to serve a copy of this executed Final Approval Order and
15 Judgment upon the LWDA, as provided by the DIR website, electronically.

16 20. The court sets a Final Report Hearing for _____, 2022 at 10:00 a.m., to
17 confirm that distribution efforts are fully completed, including the distribution of uncashed class
18 member checks after 180 days to the State Controller's Office Unclaimed Property Fund in the names of
19 the applicable payees, that the Administrator's work is complete, and that the court's file thus may be
20 closed. All supporting papers must be filed at least 16 days before the Final Report Hearing date.

21 Dated: _____

22
23 _____
24 Hon. Peter Wilson, Judge
25 Superior Court of California
26 In and for the County of Orange
27
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On October 26, 2021, I served the foregoing document described as:

on interested parties in this action by ELECTRONIC SERVICE, addressed as follows:

The LWDA by electronically submitting the document on the LWDA website.

Executed this October 26, 2021, California.

MMII-my electronic signature
Maurice Mandel II