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and Proposed Class Counsel
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**
11

12 MARIA CAPETILLO, on behalf of herself
and all "aggrieved employees" pursuant to
13 Labor Code § 2698 et seq.,

14 Plaintiff,

15 v.

16 LOVE THOSE WINGS, INC., a California
corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants.
19
20
21

Case No.: 30-2021-01183363-CU-OE-CXC

*Assigned For All Purposes to the Honorable Judge
William Claster, Dept. CX104*

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: May 6, 2022

TIME: 9:00 A.M.

DEPT.: CX-104

Reservation Number: 73732198

Action Filed: February 9, 2021

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23 Plaintiff Maria Capetillo's ("Plaintiff") Motion for Preliminary Approval of Class Action
24 Settlement and Leave to File First Amended Complaint came on for hearing before this Court in
25 Department CX-104, Judge William Claster presiding, on May 6, 2022. The Court, having
26 considered the papers submitted in support of the motion and having heard oral argument of the
27 parties, **HEREBY ORDERS THE FOLLOWING:**
28

1 1. The Court grants preliminary approval of the settlement based upon the terms set
2 forth in the Settlement Agreement and Release of Claims (“Settlement Agreement”) filed with the
3 Court. The settlement appears to be fair, adequate, and reasonable to the class;

4 2. This Order incorporates by reference the definitions in the Settlement Agreement
5 and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
6 Agreement.

7 3. The Settlement falls within the range of reasonableness and appears to be
8 presumptively valid, subject only to any objections that may be raised at the final hearing;

9 4. The Court approves, as to form and content, the Notice of Pendency of Proposed
10 Class Action Settlement and Final Hearing (“Notice”), attached as Exhibit “1” to the Settlement
11 Agreement, and the Request for Exclusion form, attached as Exhibit “2” to the Settlement
12 Agreement;

13 5. The Court directs the mailing of the Notice and Request for Exclusion form by first
14 class mail to the Settlement Class Members in accordance with the schedule set forth below. The
15 Court finds that the dates selected for the mailing and distribution of the Notice and Request for
16 Exclusion form, as set forth herein, meet the requirements of due process and provide the best
17 notice practicable under the circumstances and shall constitute due and sufficient notice to all
18 persons entitled thereto;

19 6. It is ordered that the Settlement Class is preliminarily certified for settlement
20 purposes only. This stipulation by the Parties will not be deemed admissible in this or any other
21 proceeding should this Settlement not become final. The Settlement Class is defined as all
22 individuals who worked for Love Those Wings, Inc. as hourly and/or non-exempt employees in
23 California at any time between February 9, 2017 and February 28, 2022;

24 7. The Court confirms Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines &
25 Gaines, APLC as Class Counsel. The Settlement Agreement specifies for an award of attorneys’
26 fees of up to \$100,000 and documented litigation costs of up to \$12,000 to Class Counsel, which is
27 subject to final approval by the Court following a further motion by Class Counsel;

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1 8. The Court confirms Maria Capetillo as the Class Representative. The Settlement
2 Agreement specifies for a proposed service payment in an amount not to exceed \$2,500, which is
3 subject to final approval by the Court;

4 9. The Court grants preliminary approval of the Private Attorneys General Act
5 payment of \$20,000. Of this amount, \$15,000 shall be paid to the Labor and Workforce
6 Development Agency and \$5,000 shall be distributed to PAGA Members on a pro rata basis based
7 on the number of workweeks worked by each PAGA Member during the PAGA Period;

8 10. The Court hereby approves ILYM Group, Inc. as the Claims Administrator and
9 grants preliminary approval of the payment of fees and other charges of the Claims Administrator
10 in an amount not to exceed \$15,000;

11 11. The Court grants Plaintiff leave to file the First Amended Class and Representative
12 Action Complaint attached as Exhibit "3" to the Settlement Agreement, within five (5) court days
13 of the entry of this Order;

14 12. Neither the Settlement nor any exhibit, document, or instrument delivered
15 thereunder shall be construed as a concession or admission by Defendant in any way that the claims
16 asserted have any merit or that this Action was properly brought as a class or representative action,
17 and shall not be used as evidence of, or used against Defendant as, an admission or indication in
18 any way, including with respect to any claim of any liability, wrongdoing, fault or omission by
19 Defendant or with respect to the truth of any allegation asserted by any person. Whether or not the
20 Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement,
21 proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any
22 event be construed as, offered or admitted in evidence as, received as or deemed to be evidence for
23 any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption,
24 concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission,
25 concession or damage;

26 12. In the event the Settlement does not become effective in accordance with the terms
27 of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled
28 or fails to become effective for any reason, this Order shall be rendered null and void and shall be

1 vacated, and the Parties shall revert to their respective positions as of before entering into the
2 Settlement Agreement, and expressly reserve their respective rights regarding the prosecution and
3 defense of this Action, including all available defenses and affirmative defenses, and arguments
4 that any claim in the Action could not be certified as a class action and/or managed as a
5 representative action. In such an event, the Court's orders regarding the Settlement, including this
6 Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is
7 intended to alter the terms of the Agreement with respect to the effect of the Agreement if it is not
8 approved;

9 13. The Final Approval Hearing shall be held before the undersigned at _____.M. on
10 _____, 2022, in Department CX-104 of the Superior Court of California, County of
11 Orange, to consider the fairness, adequacy and reasonableness of the proposed Settlement
12 preliminarily approved by this Order of Preliminary Approval, and to consider the service award
13 to the named Class Representative, Settlement Administration expenses, and Class Counsel's
14 attorneys' fees and litigation expenses incurred.

15 14. The Court orders the following schedule of dates for the specified actions/further
16 proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	No later than 10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Request for Exclusion form to Class Members	No later than 21 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a Request for Exclusion form to Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members

<u>EVENT</u>	<u>TIMING</u>
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	No fewer than 16 Court days prior to the final approval hearing
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	No fewer than 16 Court days prior to the final approval hearing
Final settlement approval hearing	_____ at _____ (the Parties propose a date approximately 100 days after entry of this Order)

Dated: _____

JUDGE OF THE SUPERIOR COURT