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FILED
Superior Court of California
County of Sacramento
04/28/2023
V. Aleman, Deputy

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

CHRISTINA VALDEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

HEAT MAKE SENSE, INC., a California
corporation dba AMIKA; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 34-2021-00296194

CLASS AND REPRESENTATIVE ACTION

[Hon. Lauri Damrell Department 28]

[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT

*[Filed with Plaintiff's Notice of Motion and
Memorandum of Points and Authorities,
Declaration of Kane Moon, Declaration of
Christina Valdez, and Declaration of Madely
Nava]*

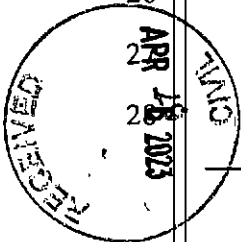
FINAL APPROVAL HEARING

Date: April 28, 2023

Time: 9:00 a.m.

Dept: 28

BY FAX


**[PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

1 On November 1, 2022, this Court issued an Order Granting Plaintiff's Motion for
2 Preliminary Approval of Class Action Settlement. Plaintiff now seeks an order and judgment
3 granting final approval of the Joint Stipulation of Class Action Settlement ("Settlement
4 Agreement"), attached to the Declaration of Kane Moon in Support of Plaintiff's Motion for
5 Final Approval of Class Action Settlement as Exhibit 1.

6 Due and adequate notice having been given to the Settlement Class Members, as defined
7 below, and the Court having reviewed and considered Plaintiff's Motion for Final Approval of
8 Class Action Settlement, the supporting declarations and exhibits thereto, all papers filed and
9 proceedings had herein, and the absence of any written objection received regarding the
10 proposed Settlement, and good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED,**
11 **AND DECREED AS FOLLOWS:**

12 1. The Court, for purposes of this Final Order and Judgment, refers to all defined
13 terms as set forth in the Settlement Agreement.

14 2. The Court has jurisdiction over all claims asserted in the Action, Plaintiff, the
15 Settlement Class Members, and Defendant.

16 3. The Court held a final fairness hearing on the question of whether the proposed
17 Settlement, attorneys' fees and costs to Class Counsel, and the Class Representative's
18 Enhancement Payment should be finally approved as fair, reasonable, and adequate as to Class
19 Members.

20 4. The Court finds that the Settlement Agreement appears to have been made and
21 entered into in good faith, the terms of which are fair, reasonable, and adequate, and therefore
22 meets the requirements for final approval. The Court approves the Settlement Agreement subject
23 to the limitations on the requested fees and enhancements, as set forth below.

24 5. Release by the Class and PAGA Individuals: By operation of this Final Order and
25 Judgment and Defendant's payment of all sums due pursuant to the Settlement Agreement, and
26 except as to such rights or claims as may be created by this Settlement, the Class
27 Representatives, the Class and each Class Member who did not submit a valid and timely request
28 for exclusion as to claims other than the PAGA claim, and each PAGA Individual, regardless

1 of whether they have requested exclusion from the Settlement of Class claims, will release
2 claims as follows:

- 3 a. **Identity of Released Parties.** The released parties are Defendant, and all related
4 companies, subsidiaries, owners, shareholders, members, agents (including,
5 without limitation, any investment bankers, accountants, insurers, reinsurers,
6 attorneys and any past present or future officers, directors, and employees)
7 predecessors, successors, and assigns (collectively "Releasees").
- 8 b. **Date Release Becomes Active.** The Released Claims and Released PAGA Claims
9 will be released upon the later of (1) the Settlement's Effective Date, or (2) the
10 satisfaction of Defendant's obligation to provide to the Settlement Administrator a
11 sum in the amount required to satisfy all required payments and distributions
12 pursuant to this Settlement and the Order and Judgment of final approval. Class
13 Members will not release the Released Claims or Released PAGA Claims until both
14 the Effective Date of the Settlement has occurred, and Defendant has paid all
15 amounts owing under the Settlement.
- 16 c. **Claims Released by Settlement Class Members.** Each and every Class Member,
17 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
18 submitted a timely and valid Request for Exclusion (which will not effectuate an
19 opt-out from the release of Released PAGA Claims), hereby releases Releasees from
20 the following claims for the entire Class Period:

- 21 1. any and all claims stated in the Complaint, or that could have been
22 stated based on the facts alleged in the Action, including but not
23 limited to all state wage and hour claims (including all claims under
24 the California Labor Code) for unpaid wages, minimum wage,
25 overtime, off-the-clock work, meal periods, rest periods,
26 unreimbursed business expenses, wage statement violations, interest,
27 penalties, and attorneys' fees, waiting time penalties, withholding
28 from wages and the related provisions of the Labor Code including

1 but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3 ,
2 226.7, 226.8, 510, 512, 512.5, 558, 1194, 1194.2, 1198, 2802, and
3 derivative claims under California Business & Professions Code §§
4 17200 et seq., and all claims under the governing Wage Order, and
5 FLSA (“Released Claims”);

6 2. as to any Class Member who cashes their Settlement Payment, the
7 Settlement Administrator shall include language on the Settlement
8 Payments that informs the Class Members that the signing and
9 negotiation of that check shall serve as the Class Member’s consent
10 to join the Action for purposes of releasing all claims arising under
11 the Fair Labor Standards Act that are alleged in the Action or related
12 to the claims stated or that could have been stated in the Action,
13 implicitly or explicitly;

14 d. **Claims Released by the Class, Including PAGA Individuals.** All Class Members,
15 including all PAGA Individuals, release the Released PAGA Claims, regardless of
16 whether they have requested exclusion from the Settlement as to the claims of the
17 Class.

18 6. The Parties shall bear their own respective attorneys’ fees and costs, except as
19 otherwise provided for in the Settlement Agreement and approved by the Court.

20 7. Solely for purposes of effectuating the Settlement, the Court finally certifies the
21 following Class (the “Settlement Class”): “All independent contractors providing brand
22 ambassador and educator services to Heat Make Sense, Inc. or Amika, LLC, successor-in-
23 interest to Heat Make Sense, Inc., in California during the Class Period and “Settlement Class
24 Members”, who are those Class Members who do not submit timely exclusion requests to the
25 Settlement Administrator.”

26 8. No Class Members have objected to the terms of the Settlement and no Class
27 Members have requested exclusion from the Settlement.

28 9. The Notice of Class Action Settlement (“Class Notice”), which was attached to

1 the Settlement Agreement as Exhibit A and provided to the Settlement Class, conforms with the
2 requirements of California Rules of Court 3.766 and 3.769, and constitutes the best notice
3 practicable under the circumstances, by providing individual notice to all Class Members who
4 could be identified through reasonable effort, and by providing due and adequate notice of the
5 proceedings and of the matters set forth therein to the Class Members. The Class Notice fully
6 satisfies the requirements of due process and provided sufficient notice to all persons entitled
7 thereto.

8 10. The Court finds that the Gross Settlement Fund, the Net Settlement Fund, and the
9 methodology used to calculate and pay each Settlement Class Member's Allocation Amount are
10 fair and reasonable and authorizes the Settlement Administrator to pay the Settlement shares in
11 accordance with the terms of the Settlement Agreement. Defendant shall pay into a common
12 fund the total of \$120,000.00 ("Gross Settlement Amount") to resolve this Litigation. Defendant
13 shall fund the Gross Settlement Amount within 14 calendar days after final approval of the
14 Settlement. Thereafter, Settlement allocation amounts shall be distributed to Settlement Class
15 Members and shall be effected pursuant to the terms of the Settlement Agreement.

16 11. From the Gross Settlement Amount, \$7,500.00 shall be paid to the California
17 Labor and Workforce Development Agency ("LWDA"), representing 75% of the PAGA
18 Allocation for penalties awarded under the terms of the Settlement Agreement pursuant to the
19 Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

20 12. The Court confirms the appointment of Plaintiff Christina Valdez as Class
21 Representative. In addition to any recovery that Plaintiff may receive under the Settlement as a
22 Class Member, the Court approves and orders an Enhancement Payment in the amount of
23 \$7,500.00 from the Gross Settlement Amount to Plaintiff for her role and service as Class
24 Representative, and for the risks and work attendant to that role.

25 13. The Court confirms the appointment of Moon & Yang, APC as Class Counsel, as
26 they are experienced in wage-and-hour class action litigation, have no conflicts of interest with
27 Plaintiff or Class Members, and have adequately represented Class interests. The Court
28 approves and orders the payment to Class Counsel from the Gross Settlement Amount for their

1 reasonable attorneys' fees in the amount of \$40,000.00 (the total award does not exceed 33 1/3%
2 of the Gross Settlement Amount limit), as well as for their reasonable and actual litigation
3 expenses in the amount of \$14,540.24 (the total award does not exceed the \$18,000.00 limit).
4 These fees and costs shall be distributed to Class Counsel as set forth in the Settlement
5 Agreement. The Court finds that the fees are reasonable in light of the benefit provided to the
6 Class.

7 14. The Court confirms the appointment of ILYM Group, Inc. as the Settlement
8 Administrator. The Court approves and orders the payment of reasonable administration costs
9 in the amount of \$5,490.00 to ILYM Group, Inc. from the Gross Settlement Amount for the
10 performance of its services (the total award does not exceed the \$6,000.00 limit).

11 15. In accordance with California Rule of Court 3.771(b), the Parties are ordered to give
12 notice of this Final Order and Judgment to all Settlement Class Members via first class mail at their
13 last known addresses.

14 16. This Order and Judgment is intended to be a final disposition of the Litigation in its
15 entirety and is intended to be immediately appealable.

16 17. This Court shall retain jurisdiction with respect to all matters related to the
17 administration and consummation of the Settlement Agreement and any and all claims asserted in,
18 arising out of, or related to the subject matter of the Litigation, including but not limited to all
19 matters related to the Settlement Agreement and the determination of all controversies relating
20 thereto.

21 18. Plaintiff's Motion for Final Approval of Class Action Settlement is hereby
22 GRANTED, and the Court directs that final judgment shall be entered in accordance with the terms
23 of this Order.

24 19. The Court sets a Non-Appearance Hearing (Case Review) Re: Distribution on
January 25, 2024 ^{1:30 p.m.} at _____ in Department 28. Class Counsel is ordered to
25 _____, ~~2023~~ at _____
26 file a final report and declaration by the Settlement Administrator regarding settlement distribution
no later than _____. No appearance by the Parties is required at the Case
27 Review if the Settlement Administrator's declaration is filed prior to the hearing and the
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1 Settlement Administrator reports that all the distributions under the Settlement Agreement are
2 complete.

3 **IT IS SO ORDERED.**

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5 DATE: 04/28/2023



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Lauri A. Damrell / Judge
Hon. Lauri A. Damrell
Judge of the Sacramento Superior Court

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los
Angeles, California 90017. On April 5, 2023, I served the foregoing document described as:

5 **[PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION FOR**
6 **FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

7 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
8 addressed as follows:

9 Ndubisi A. Ezeolu (SBN 256834)
ndubisi.ezeolu@tuckerellis.com

10 Lisa I. Carteen (SBN 204764)
lisa.carteen@tuckerellis.com

11 Maia Mdinaradze (SBN 291478)
maia.mdinaradze@tuckerellis.com

12 **TUCKER ELLIS LLP**

13 515 South Flower Street

14 Forty-Second Floor

15 Los Angeles, CA 90071

16 Telephone: (213) 430-3400

17 Facsimile: (213) 430-3409

18 *Attorneys for Defendant HEAT MAKE SENSE, INC., a New York corporation dba Amika*
19 *(erroneously sued as HEAT MAKE SENSE, INC. a California corporation dba AMIKA)*

20 [✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California.
21 The envelope was mailed with postage thereon fully prepaid. I am "readily familiar"
22 with the firm's practice of collection and processing correspondence for mailing.
23 Under that practice it would be deposited with U.S. postal service on that same day
24 with postage thereon fully prepaid at Los Angeles, California in the ordinary course
25 of business. I am aware that on motion of the party served, service is presumed
26 invalid if postal cancellation date or postage meter date is more than one day after
27 date of deposit for mailing in affidavit

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed this, April 5, 2023 at Los Angeles, California.

25 Janelle Jickain
26 Type or Print Name

27 
28 Signature