

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Annabel Blanchard (SBN 258135)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CHRIS WARD, individually, and on behalf
of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

v.

RELISH LABS LLC, D/B/A HOME CHEF,
an unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: CIVSB2113821

Honorable David Cohn
Department S26

CLASS ACTION

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

Date: December 23, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: May 13, 2021
FAC Filed: August 26, 2022
Trial Date: None Set

1 This matter has come before the Honorable David Cohn in Department S26 of the Superior
2 Court of the State of California, for the County of San Bernardino, on December 23, 2022, at
3 10:00 a.m. for Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Lawyers for
4 Justice, PC appeared as counsel for Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan
5 ("Plaintiffs"), individually and on behalf of all others similarly situated and other aggrieved
6 employees and Morrison & Foerster LLP appeared as counsel for Defendant Relish Labs LLC
7 ("Defendant").

8 The Court, having carefully considered the papers, argument of counsel, and all matters
9 presented to the Court, and good cause appearing, hereby GRANTS Plaintiffs' Motion for
10 Preliminary Approval of Class Action Settlement.

11 **IT IS HEREBY ORDERED THAT:**

12 1. The Court preliminarily approves the Class Action and PAGA Settlement
13 Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as
14 "EXHIBIT 1" to the Declaration of Annabel Blanchard in Support of Plaintiffs' Motion for
15 Preliminary Approval of Class Action Settlement. This is based on the Court's determination that
16 the Settlement falls within the range of possible approval as fair, adequate, and reasonable.

17 2. This Order incorporates by reference the definitions in the Settlement Agreement,
18 and all capitalized terms defined therein shall have the same meaning in this Order as set forth in the
19 Settlement Agreement.

20 3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate,
21 and reasonable. It appears to the Court that extensive investigation and research have been conducted
22 such that counsel for the parties at this time are able to reasonably evaluate their respective positions.
23 It further appears to the Court that the Settlement, at this time, will avoid substantial additional costs
24 by all parties, as well as avoid the delay and risks that would be presented by the further prosecution
25 of the cases. It further appears that the Settlement has been reached as the result of intensive, serious,
26 and non-collusive, arms-length negotiations, and was entered into in good faith.

27 4. The Court preliminarily finds that the Settlement, including the allocations for the
28 Fee and Expense Award, Service Payments, PAGA Settlement Amount, Settlement Administration

1 Costs, and Class Settlement Awards to the Settlement Class Members provided thereby, appear to
2 be within the range of reasonableness of a settlement that could ultimately be given final approval
3 by this Court. Indeed, the Court has reviewed the monetary recovery that is being granted as part of
4 the Settlement and preliminarily finds that the monetary settlement awards made available to the
5 Class Members are fair, adequate, and reasonable when balanced against the probable outcome of
6 further litigation relating to certification, liability, and damages issues.

7 5. The Court concludes that, for settlement purposes only, the proposed Class meets
8 the requirements for certification under section 382 of the California Code of Civil Procedure in
9 that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
10 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
11 community of interest amongst the members of the Class with respect to the subject matter of the
12 litigation; (c) Plaintiffs' claims are typical of the claims of the members of the Class; (d) Plaintiffs
13 will fairly and adequately protect the interests of the members of the Class; (e) a class action is
14 superior to other available methods for the efficient adjudication of the controversy; and (f) Class
15 Counsel is qualified to act as counsel for Plaintiffs in their individual capacities and as the
16 representatives of the Class.

17 6. The Court conditionally certifies, for settlement purposes only, the Class, defined as
18 follows:

19 All current and former hourly paid or non-exempt employees who were employed
20 by Defendant in California at any time during the period from May 13, 2017 up to
 and including the Preliminary Approval Date (the "Class Period").

21 7. The Court provisionally appoints Lawyers *for* Justice, PC as counsel for the Class
22 ("Class Counsel").

23 8. The Court provisionally appoints Plaintiffs Chris Ward, Jose Pereda, and Tawny
24 Milligan as the representatives of the Class ("Class Representatives").

25 9. The Court provisionally appoints Phoenix Class Action Administration Solutions to
26 handle the administration of the Settlement ("Settlement Administrator").

27 10. Within fifteen (15) business days of the date of this Order, Defendant shall provide
28 the Settlement Administrator with the following information about each Class Member: last known

1 full name, last known mailing address, last known telephone number, Social Security number, the
2 individual number of Class Work Weeks during the Class Period, the individual number of Class
3 Work Weeks during the period from May 13, 2017 through November 9, 2021, and the individual
4 number of PAGA Work Weeks during the PAGA Period, all in conformity with the Settlement
5 Agreement (collectively, this information is referred to as the “Class Information List”).

6 11. The Court approves, as to both form and content, the Notice of Settlement of Class
7 Action (“Class Notice”) attached hereto as “**EXHIBIT A.**” The Class Notice shall be provided to
8 Class Members in the manner set forth in the Settlement Agreement. The Court finds that the Class
9 Notice appears to fully and accurately inform the Class Members of all material elements of the
10 Settlement, of Class Members’ right to be excluded from the Class Settlement, of Settlement Class
11 Members’ right to dispute the Class Work Weeks credited to each of them, and of each Settlement
12 Class Member’s right and opportunity to object to the Class Settlement by serving an Objection.
13 The Court further finds that distribution of the Class Notice substantially in the manner and form set
14 forth in the Settlement Agreement and this Order, and that all other dates set forth in the Settlement
15 Agreement and this Order, meet the requirements of due process and shall constitute due and
16 sufficient notice to all persons entitled thereto. The Court further orders the Settlement
17 Administrator to mail the Class Notice by First-Class U.S. mail to all Class Members within ten (10)
18 business days of receipt of the Class Information List, pursuant to the terms set forth in the
19 Settlement Agreement.

20 12. The Court hereby preliminarily approves the proposed procedure, set forth in the
21 Settlement Agreement, for seeking exclusion from the Settlement. Any Class Member may choose
22 to be excluded from the Settlement by submitting a timely written opt out request in conformity with
23 the requirements set forth in the Class Notice, to the Settlement Administrator, postmarked no later
24 than the date which is forty-five (45) calendar days from the initial mailing of the Class Notice to
25 Class Members (“Notice Response Deadline”), or, in the case of a re-mailed Class Notice, the Notice
26 Response Deadline will be extended by fifteen (15) calendar days from the date of the original forty-
27 five (45) calendar day deadline. Any such person who timely and validly chooses to opt out of, and
28 be excluded from, the Class Settlement will not be entitled to any recovery under the Class

1 Settlement and will not be bound by the Class Settlement or have any right to object, appeal, or
2 comment thereon. Class Members who have not submitted a timely and valid request to be excluded
3 from the Class Settlement (i.e., Settlement Class Member) shall be bound by the Settlement
4 Agreement and any final judgment based thereon.

5 13. A Final Approval Hearing shall be held before this Court on
6 _____ at _____ a.m./p.m. in
7 Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street,
8 San Bernardino, California 92415, to determine all necessary matters concerning the Settlement,
9 including: whether the proposed settlement of the action on the terms and conditions provided for in
10 the Settlement is fair, adequate, and reasonable and should be finally approved by the Court; whether
11 a judgment, as provided in the Settlement, should be entered herein; whether the plan of allocation
12 contained in the Settlement should be approved as fair, adequate, and reasonable to the Class
13 Members; and whether the requests for the Fee and Expense Award, Service Payments, and
14 Settlement Administration Costs should be finally approved.

15 14. Class Counsel shall file a motion for final approval of the Settlement and for Fee
16 and Expense Award, Service Payments, and Settlement Administration Costs, along with the
17 appropriate declarations and supporting evidence, including the Settlement Administrator's
18 declaration, by _____, to be heard
19 at the Final Approval Hearing.

20 15. To object to the Class Settlement, a Class Member must not request to be excluded
21 from the Class Settlement and must serve the Settlement Administrator with a written Objection on
22 or before the Notice Response Deadline. The Objection must be signed and must contain the
23 information that is required, as set forth in the Class Notice, including and not limited to the grounds
24 for the Objection. Settlement Class Members also have the option to orally present their objections
25 to the Class Settlement in Court at the Final Approval Hearing, irrespective of whether or not they
26 have submitted an Objection.

27 16. The Settlement is not a concession or admission and shall not be used against
28 Defendant as an admission or indication with respect to any claim of any fault or omission by

1 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any
2 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
3 thereof, shall in any event be construed as, offered or admitted into evidence as, received as or
4 deemed to be in evidence for any purpose adverse to the Defendant, including, but not limited to,
5 evidence of a presumption, concession, indication, or admission by Defendant of any liability, fault,
6 wrongdoing, omission, concession, or damages of any kind whatsoever.

7 17. In the event the Settlement does not become effective in accordance with the terms
8 of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled,
9 or fails to become effective for any reason, this Order shall be rendered null and void, shall be
10 vacated, and the Parties shall revert back to their respective positions as of before entering into the
11 Settlement Agreement, including without limitation that the first amended complaint in this action
12 shall be withdrawn and shall no longer have any force or effect and that the settlement class shall be
13 de-certified.

14 18. The Court reserves the right to adjourn or continue the date of the Final Approval
15 Hearing and any dates provided for in the Settlement Agreement without further notice to the Class
16 Members and retains jurisdiction to consider all further applications arising out of or connected with
17 the Settlement.

18 **IT IS SO ORDERED.**

19
20 Dated: _____

By: _____
The Honorable David Cohn
Judge of the Superior Court

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CHRIS WARD, individually, and on behalf
of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff

v.

RELISH LABS LLC, D/B/A HOME CHEF,
an unknown business entity; and DOES 1
through 100, inclusive,

Defendants

Case No. CIV SB 2113821

**NOTICE OF SETTLEMENT OF
CLASS ACTION**

ATTENTION: If you were employed by Relish Labs LLC (“Defendant”), doing business as Home Chef, as an hourly-paid or non-exempt employee in California between May 13, 2017 and [Preliminary Approval Date] (the “Class Period”), you may be a Class Member eligible to receive money from a proposed Class Settlement in the above-captioned class action lawsuit.

PLEASE READ THIS NOTICE CAREFULLY. This Notice relates to the proposed Class Settlement. If you are a Class Member, it contains important information affecting your rights to participate in the Class Settlement as further described below. This Notice advises you of the terms of the Class Settlement and your rights and options under it.

To be eligible for your share of the Class Settlement, you are not required to make a claim. However, to ensure receipt of your share, you must update the Settlement Administrator, Phoenix Class Action Administration Solutions, with any change of address.

What is this proposed Settlement about?

Plaintiffs Jose Pereda, Chris Ward, and Tawny Milligan (collectively, “Plaintiffs”) each filed their own respective related actions with overlapping claims against Defendant on November 23, 2020 (the *Pereda* Action), May 13, 2021 (the *Ward* Action), and June 24, 2021 (the *Milligan* Action) (collectively, the “Actions”). The operative first amended complaint in the *Ward* Action (the “Complaint”), filed for settlement purposes only on August 26, 2022, names all three Plaintiffs and consolidates their claims. The Complaint and all the other complaints in the Actions are referred to collectively as the “Complaints.” The Complaint alleges claims for (1) unpaid overtime, (2) unpaid meal period premiums, (3) unpaid rest period premiums, (4) failure to pay all wages including minimum wages, (5) untimely paid final wages, (6) untimely paid wages during employment, (7) non-compliant wage statements, (8) failure to keep requisite payroll records, (9) unreimbursed business expenses, (10) failure to provide paid

sick leave and vacation pay, (11) failure to provide reporting time pay, (12) failure to provide suitable seating, (13) violation of California Business and Professions Code section 17200 et seq., and (14) violation of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Under the proposed Class Settlement, Defendant agrees to make payments (“Class Settlement Awards”) to Class Members who do not opt out of the Settlement (“Settlement Class Members”). These Class Settlement Awards will be based on the number of weeks during the Class Period that each Settlement Class Member was employed by Defendant for at least one day in California as a non-exempt and/or hourly-paid employee (“Class Work Weeks”) compared to the total number of Class Work Weeks for all Settlement Class Members, as more fully described below.

Defendant also agrees to pay the Settlement Administration Costs, employer-side Withholdings and Taxes required by law with regard to the Class Settlement Awards, Service Payments to each of the Plaintiffs, a PAGA Settlement Amount to be paid to the California Labor & Workforce Development Agency (“LWDA”) and PAGA Group Members in settlement of the PAGA claims, and a Fee and Expense Award to Plaintiffs’ counsel (“Class Counsel”), subject to the Court’s approval. Defendant’s maximum total obligation under the proposed Settlement is \$1,450,000, exclusive of its share of Withholdings and Taxes, and subject to escalation only to the extent described below.

The proposed Settlement is not an admission of liability by Defendant. Throughout the course of litigation in the Actions, Defendant has denied any liability or wrongdoing, or that any compensable injury arose out of any of the matters alleged in any of them. Defendant contends that it has complied with all applicable laws and regulations regarding all of those matters.

Class Counsel believes that the proposed Settlement is in the best interests of the Class Members. Further proceedings would be very expensive and take a long time. Moreover, no one can predict the precise outcome of the disputed issues in this case. Therefore, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate for the Class Members and the State of California.

The Court has preliminarily approved the proposed Settlement as fair, reasonable, and adequate. The final determination of those issues will be made at the Final Approval Hearing to be held on [FA hearing date] at [FA hearing time] (“Final Approval Hearing”).

Summary of the proposed Settlement

Defendant has agreed to pay \$1,450,000 (“Gross Settlement Amount”), plus its share of Withholdings and Taxes, to resolve all claims that were alleged in any of the Complaints or that could have been alleged based on the facts alleged in any of the Complaints, for Settlement Class Members’ release of claims described below, and for the release of PAGA claims in the PAGA Settlement. This amount is subject to escalation if it is determined that the total number of Class Work Weeks for the period from May 13, 2017 through November 9, 2021 exceeded 110% of 71,940, in which case the Gross Settlement Amount will increase on a proportional basis to the extent this 110% threshold is exceeded (e.g., if the total number of Class Work Weeks is actually

111% of 71,940, the Gross Settlement Amount will increase by 1%). If finally approved by the Court, the proposed Settlement will distribute money as follows:

Class Settlement Awards to Settlement Class Members: Settlement Class Members (Class Members who do not exclude themselves from the Settlement) will each be paid a Class Settlement Award, which is their pro-rata share of the Net Settlement Sum, calculated as follows: The Settlement Administrator will calculate the total number of Class Work Weeks for all Settlement Class Members. The Settlement Administrator will then divide the Net Settlement Sum by the total Class Work Weeks for all Settlement Class Members, resulting in a per Class Work Week value for each Settlement Class Member. The Settlement Administrator will then take the per Class Work Week value and multiply it by the number of individual Class Work Weeks for each Settlement Class Member.

“Class Work Weeks” means the number of weeks in the Class Period during which a Settlement Class Member was employed by Defendant for at least one day in California as a non-exempt and/or hourly-paid employee. Class Work Weeks will be calculated by Defendant based on its pay data.

“Net Settlement Sum” means the Gross Settlement Amount minus the payment of (a) the Fee and Expense Award, (b) the PAGA Settlement Amount, (c) the Service Payments, and (d) the Settlement Administration Costs, all of which are described below.

Class Settlement Awards shall be allocated one-third (1/3) to wages subject to Withholdings and Taxes and two-thirds (2/3) to interest, penalties, and non-wage damages.

Fee and Expense Award to Class Counsel: Upon approval by the Court, Defendant will pay attorneys’ fees and reimburse litigation costs and expenses to Class Counsel (Lawyers for Justice P.C.). The proposed Settlement permits Class Counsel to request up to 35% of the Gross Settlement Amount (\$507,500 if the Gross Settlement Amount remains at \$1,450,000) as their fees for prosecuting this case and up to \$30,000 for reimbursement of their costs and expenses incurred in the Action. You are not personally responsible for any of Class Counsel’s attorneys’ fees, costs, or expenses.

PAGA Settlement Amount: The proposed Settlement provides for a payment of \$150,000 for resolution of the PAGA claims alleged in the Actions. Of that amount, 75% (or \$112,500) of the PAGA Settlement Amount shall be paid to the LWDA and 25% (or \$37,500) of the PAGA Settlement Amount shall form the PAGA Fund to be paid to PAGA Group Members.

Other Payments: The proposed Settlement provides for a Service Payment to each of the Plaintiffs of up to \$7,500. The proposed Settlement further provides for payment estimated not to exceed \$22,000 to the Settlement Administrator, Phoenix Class Action Administration Solutions, for its services in mailing the Class Notice and administering the Settlement.

What are my rights and options?

1. **You can exclude yourself from the Class Settlement:** If you do not want a Class Settlement Award and do not want to be bound by any of the proposed Class Settlement's terms, including the release of the Released Class Claims discussed below, you must make a timely written Request for Exclusion. Your Request for Exclusion must contain (a) the name and case number of the *Ward* Action (*Chris Ward v. Relish Labs LLC*, San Bernardino Superior Court Case No. CIV SB 2113821), (b) your full name, signature, address, telephone number, and the last four digits of your Social Security number, (c) the words "Request for Exclusion" at the top of the document, and (d) the statement: "I wish to be excluded from the Class Settlement in this case."

A Request for Exclusion form that you may use is attached as Form B to this Notice. Your Request for Exclusion must be mailed to the Settlement Administrator and must be postmarked by [DATE – 45 days from mailing Class Notice / Notice Response Deadline]. You should not request exclusion if you wish to receive money from the Class Settlement.

You do not have the right to be excluded from the PAGA Settlement, whether or not you exclude yourself from the Class Settlement.

2. **You can object to the Class Settlement:** You can object to the Settlement before the Court's final approval of the Settlement. To object, you should submit a written objection to the Settlement Administrator by [DATE – 45 days from mailing Class Notice / Notice Response Deadline]. You may also appear and object to the Settlement at the Final Approval Hearing currently set for [FA hearing time] on [FA hearing date], in Department S26 of the Superior Court of California, County of San Bernardino, Civil Division of the San Bernardino District, located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415-0210. You are not required to appear, either personally or through counsel, at the Final Approval Hearing in order for your written objection to be considered. You may object to the Settlement only if you do NOT submit a Request for Exclusion.

You do not have the right to object to the PAGA Settlement, whether or not you object to the Class Settlement.

3. **You can dispute the number of your Class Work Weeks:** A Notice of Eligible Work Weeks form is attached as Form A to this Notice. It provides your number of Class Work Weeks according to Defendant's records. If you do not agree with the number of your Class Work Weeks shown on the form, you may dispute the number by completing the Notice of Eligible Work Weeks form and mailing it to the Settlement Administrator by [DATE – 45 days from mailing Class Notice / Notice Response Deadline].

4. **You can do nothing:** You can do nothing. If you do nothing, you will be bound by the proposed Settlement terms and you will be entitled to receive a Class Settlement Award as described above.

To the extent you are also a PAGA Group Member, you will also be entitled to receive a PAGA Settlement Award, regardless of whether you exclude yourself from the Class Settlement, object to the Class Settlement, dispute the number of your Class Work Weeks, or do nothing.

What claims am I releasing by participating in the Class Settlement?

In exchange for the consideration given by Defendant in the proposed Settlement, all Class Members who do not opt out of the Class Settlement (the Settlement Class Members) will expressly release, waive and discharge, and will be deemed to have released, waived and discharged, all Released Class Claims against all Released Parties.

“Released Class Claims” means all claims, debts, liabilities, demands, obligations, damages, and actions or causes of action of any kind that arising during the Class Period, which were alleged in any of the Complaints or could have been alleged against any of the Released Parties based on the facts alleged in any of the Complaints, including (without limitation) claims under California Labor Code sections 200, 201, 202, 203, 204, 210, 218, 218.5, 226, 226.3, 226.7, 227.3, 245 et seq., 432, 510, 512, 551, 552, 558, 1174, 1174.5, 1175, 1182.12, 1192, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, IWC Wage Orders, including (without limitation) Wage Order Nos. 1-2001, 3-2001, 4-2001, 5-2001, 7-2001, and 8-2001, including (without limitation) section 5 thereof and section 14, subdivisions (A) and (B) thereof; California Code of Civil Procedure section 1021.5; and California Business and Professions Code section 17200 et seq. Expressly excluded from the Released Class Claims are claims for wages in Workers’ Compensation and Unemployment Insurance benefits cases and claims for benefits under the Employee Retirement Income Security Act of 1974 (ERISA).

“Released Parties” means Relish Labs LLC, its present, former, and future parents (including without limitation The Kroger Co.), subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, and each of their respective present, past and future officers, directors, employees, partners (both general and limited), members, shareholders, agents, attorneys, insurers, and any other successors, assigns, and legal representatives.

All Settlement Class Members intend and are deemed to intend that this Settlement shall be effective as a bar to any and all Released Class Claims against any and all Released Parties.

The Settlement Class Members further agree not to sue or otherwise make a claim against any of the Released Parties arising out of or related to any of the Released Class Claims. The Settlement Class Members further agree that their release, waiver and relinquishment of the Released Class Claims shall preclude them from participating in any judgment or settlement of claims that are the subject of any of the Released Class Claims in any other class, collective, or representative action.

When is the next Court hearing?

A Final Approval Hearing will be held before the Honorable David S. Cohn in Department S26 of the Superior Court of California, County of San Bernardino, Civil Division of the San Bernardino District, located at the San Bernardino Justice Center, 247 West Third Street,

San Bernardino, California 92415-0210, on [FA hearing date] at [FA hearing time] to determine whether the Settlement is fair, reasonable, and adequate. Judge Cohn will be asked to approve the plan for distributing the Class Settlement Awards, the Fee and Expense Award to Class Counsel, the Service Payments to the Plaintiffs, the PAGA Settlement Amount, and payment to the Settlement Administrator for its services. A motion for final approval of these items should be on file with the Court no later than [REDACTED], 2023 and will be available for review after that date. This hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing.

What if I need more information?

Capitalized terms in this Notice have the same meaning they are given in the Class Action and PAGA Settlement Agreement and Release (“Agreement”), filed with the Court on [DATE] as an attachment to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed Agreement and the Preliminary Approval Order, which is also on file with the Court. If you have any questions, you can contact the Settlement Administrator at [REDACTED]. You can also contact Class Counsel at Lawyers for Justice P.C., (818) 265-1020.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION
ABOUT THIS SETTLEMENT**