

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SHELBY LOWRY, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

WOODSTOCK'S PIZZA, INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. 37-2021-00018474-CU-OE-CTL

Hon. Kenneth J. Medel – Dept.C-66

**AMENDED [~~PROPOSED~~] ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Complaint Filed: April 26, 2021

1 **AMENDED [PROPOSED] ORDER GRANTING FINAL APPROVAL**

2 The named Plaintiff Shelby Lowry (“Plaintiff”), and the settling Defendant Woodstock’s Pizza,
3 Inc. (together the “Parties” or “Settling Parties”) have entered into a Class Settlement Agreement
4 (“Stipulation”) to settle the above-captioned class action subject to the Court’s approval.

5 **A. Procedural History**

6 On October 3, 2022, the Court entered an order deeming the operative Second Amended
7 Complaint against Defendant, filed as of October 3, 2022, alleging the following causes of action: (1)
8 Failure to Pay Minimum Wages (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of
9 IWC Wage Order § 3); (2) Failure to Provide Meal Periods (Violation of Labor Code §§ 226.7 and
10 512; Violation of IWC Wage Order); (3) Failure to Permit Rest Breaks (Violation of Labor Code §§
11 226.7; Violation of IWC Wage Order); (4) Failure to Reimburse Business Expenses (Violation of Labor
12 Code §§ 2800, 2802, and the Applicable IWC Wage Order § 9); (5) Failure to Provide Accurate
13 Itemized Wage Statements (Violation of Labor Code § 226; Violation of IWC Wage Order); (6)
14 Unlawful Deductions (Violation of Labor Code § 221); (7) Failure to Pay All Wages Due Upon
15 Separation of Employment and Within the Required Time (Violation of Labor Code §§ 201, 202 and
16 203; Violation of IWC Wage Order); (8) Violation of Business and Professions Code §§ 17200, et seq.;
17 (9) Enforcement of Labor Code §§ 2698, Et Seq. (“PAGA”); and (10) Failure to Pay Overtime Wages
18 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order.)

19 On March 16, 2022, the Parties participated in a full-day mediation before experienced
20 employment mediator Stephen Pearl. Prior to and at mediation, the Parties exchanged information and
21 documents, and engaged in intensive discussions regarding their evaluations of the Litigation and
22 various aspects of the Litigation, including the risks and delays of further litigation risks to the Settling
23 Parties of proceeding with class certification and the evidence produced. The Parties agreed to settle
24 the case on behalf of all non-exempt employees of Defendant Woodstock’s Pizza, Inc. within the State
25 of California.

26 Thereafter, on September 21, 2022, Plaintiff filed his Unopposed Motion for Preliminary
27 Approval of Class and Representative Settlement.

28 Thereafter, on March 29, 2022, the Court granted Plaintiff’s Unopposed Motion for Preliminary

1 Approval of the Class Action Settlement. Notice was given to the Class Members as ordered.

2 **B. Investigation in the Class Action**

3 The Parties have conducted significant investigation of the facts and law during the
4 prosecution of this Litigation. Such discovery and investigations have included the exchange of
5 information and documents pursuant to informal discovery. Counsel for the Parties have further
6 investigated the applicable law as applied to the facts discovered regarding the alleged claims of the
7 Class Members and potential defenses thereto and the damages claimed.

8 **C. Benefits of Settlement to Class Members**

9 Plaintiff recognizes the expense and length of continued proceedings necessary to continue
10 the litigation against Defendant through trial and through any possible appeals. Plaintiff has also
11 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
12 and delays inherent in such litigation, including those involved in class certification. Plaintiff is
13 also aware of the burdens of proof necessary to establish liability for the claims asserted in the
14 Litigation, Defendant's defenses thereto, and the difficulties in establishing damages for Class
15 Members. Plaintiff has also considered the significant settlement negotiations conducted by the
16 Parties, and the advice of the neutral mediator. Based on the foregoing, Plaintiff has determined
17 that the terms and conditions for resolution of the Litigation, set forth in the Stipulation, are fair,
18 adequate and reasonable, and in the best interests of all Class Members.

19 **D. Plaintiff and the Class Members' Claims**

20 Plaintiff and the Class Members contend that the claims, contentions, and allegations by
21 Plaintiff, individually and on behalf of the Class Members, in the Litigation have merit and give
22 rise to liability on the part of Defendant. Neither the Stipulation nor any documents referred to
23 herein, or any action taken to carry out the Stipulation is or may be construed as or may be used as,
24 an admission by or against the Class Members or Class Counsel as to the merits or lack thereof of
25 the Litigation.

26 **E. Defendant's Denials of Wrongdoing**

27 Defendant has denied and continues to deny each of the claims, contentions, and damages
28 alleged by Plaintiff, individually and on behalf of the Class Members, in the Litigation. Defendant

adamantly denies any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Litigation, and believes that it has valid defenses to Plaintiff and the Class Members' claims based on liability, class certification, and damages. Neither the Stipulation, nor any document referred to or contemplated herein, nor any action taken to carry out the Stipulation, may be construed as, or may be used as an admission, concession or indication by or against Defendant of any fault, wrongdoing or liability whatsoever, including any concession that certification of a class would be appropriate in the Litigation or any other case.

F. Operation of the Settlement.

Pursuant to the Order Granting Preliminary Approval of Class Action Settlement and Setting a Final Approval Hearing ("Preliminary Approval Order") dated October 14, 2022, this Court conditionally certified the Class and granted preliminary approval to Stipulation. The Preliminary Approval Order also approved of the proposed form of notice. The Court entered the Preliminary Approval Order after review and consideration of all of the pleadings filed and representations and arguments made in connection herewith.

In compliance with the Preliminary Approval Order, the Class Notices were sent to all Class Members via first-class mail. Furthermore, follow-up mailings were performed for returned mail. The notice program was timely completed on December 29, 2022.

This matter is now before the Court on Plaintiff's Motion for Final Approval of the Class Action Settlement ("Motion for Final Approval"), including approval of a service award for the Named Plaintiff and Class Counsel's Application for attorneys' fees and costs. The Court has read, heard, and considered all the pleadings and documents submitted, all other papers filed in the Litigation, and the representations and arguments made in connection with the Motion and Application which came on for hearing on February 10, 2023. Appearing at the hearing for Plaintiff were Jonathan M. Lebe and Anthony J. Lebe of Lebe Law, APLC, as Proposed Class Counsel for the Class, and Guillermo A. Escobedo and Stephanie A. Kierig of Jackson Lewis PC for Defendant.

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1 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
2 FOLLOWS:

3 1. This Court finds that the Stipulation appears to be the product of serious, informed, non-
4 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
5 treatment to any individuals. The Court finds that the Stipulation was entered into in good faith
6 pursuant to California *Code of Civil Procedure* section 877.6. The Court further finds that the
7 Stipulation is fair, reasonable and adequate and that the Plaintiff has satisfied the standards for final
8 approval of a class action settlement under California law. Under the provisions of California *Code*
9 *of Civil Procedure* section 382 and Federal Rule of Civil Procedure 23, as approved for use by the
10 California state court in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971), the trial court has
11 discretion to certify a class where:

12 [Q]uestions of law or 'fact common to the members of the class predominate over
13 any questions affecting only individual members, and that a class action is
14 superior to the available methods for fairly and efficiently adjudicating the
15 controversy ... Fed. R. Civ. Proc. 23.

16 Certification of a settlement class is the appropriate judicial device under these circumstances.

17 The Court, for purposes of this Order, adopts all defined terms as set forth in the Stipulation.

18 2. The Court has jurisdiction over the subject matter of the Litigation, the Class
19 Representative, the Class Members, and Defendant.

20 3. The Court finds that the dissemination of the Notice of Proposed Class Action Settlement
21 as provided for in the Order Granting Preliminary Approval, constituted the best notice practicable
22 under the circumstances to all Persons within the definition of the Class, and fully met the
23 requirements of California law and due process under the United States Constitution. Based on
24 evidence and other material submitted in conjunction with the Settlement Hearing, the actual notice
25 to the class was adequate.

26 4. The Court approves the settlement of the above-captioned action, as set forth in the
27 Stipulation, each of the releases and other terms, as fair, just, reasonable, and adequate as to the
28 Settling Parties and Settlement Class Members. The Parties are directed to perform in accordance

1 with the terms set forth in the Stipulation, the Order Granting Preliminary Approval, and this Final
2 Approval Order and Judgment.

3 5. Except as otherwise provided in the Stipulation, the Settling Parties are to bear their own
4 costs and attorneys' fees.

5 6. Solely for purposes of effectuating this Stipulation, this Court has certified a class of all
6 Class Members, as those terms are defined in and by the terms of the Stipulation, and the Court deems
7 this definition sufficient for purposes of California Rules of Court 3.765(a) and 3.771. The Court
8 hereby certifies the following Class for settlement purposes only:

9 All current and former hourly or non-exempt employees of Defendant Woodstock's Pizza, Inc.
10 in California from April 26, 2017 through June 16, 2022.

11 7. The Court hereby confirms Jonathan M. Lebe and Anthony J. Lebe of Lebe Law, APLC.

12 8. The Court hereby confirms the Plaintiff Shelby Lowry as the Class Representatives in this
13 Action.

14 9. The Court finds that no member of the Settlement Class objected to the Stipulation.

15 10. With respect to the Settlement Class and for purposes of approving the settlement only
16 and for no other purpose, this Court finds and concludes that: (a) the Members of the Settlement Class
17 are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions
18 of law or fact common to the Settlement Class, and there is a well-defined community of interest
19 among Members of the Settlement Class with respect to the subject matter of the claims in the
20 Litigation; (c) the claims of the Class Representative is typical of the claims of the Members of the
21 Settlement Class; (d) the Class Representative has fairly and adequately protected the interests of the
22 Members of the Settlement Class; (e) a class action is superior to other available methods for an
23 efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative,
24 i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in their individual and representative
25 capacity and for the Class Members.

26 11. Defendant shall fund the remaining \$1,500,000 of the total Settlement Sum pursuant to
27 the terms of the Stipulation.
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1 12. The Court approves the Individual Settlement Amounts, which shall be distributed
2 pursuant to the terms of the Joint Stipulation of Class Action Settlement and Release.

3 13. Out of the total Settlement Sum and through the Claims Administrator, Defendant shall
4 pay (a) to Class Counsel attorneys' fees in the amount of \$450,000 and reimbursement of costs in the
5 amount of \$12,522.26; (b) service award to the Class Representative Shelby Lowry to reimburse him
6 for his unique services in the amount of \$10,000; (c) the sum of \$37,500 to the Labor and Workforce
7 Development Agency for its share of penalties under the Labor Code's Private Attorney General Act;
8 (e) the sum of \$12,500 for Aggrieved Employees share of penalties under the Labor Code's Private
9 Attorney General Act; and (f) \$20,000.00 to the Settlement Administrator, CPT Group, Inc., for its
10 fees and costs relating to the settlement administration process. All employee's share of state and
11 federal employment and payroll taxes shall be withheld from the Individual Settlement Amounts by
12 the Settlement Administrator. The Court finds that these amounts are fair and reasonable. Defendant
13 is directed to make such payments in accordance with the terms of the Stipulation.

14 14. In the event that the Effective Date occurs, the action captioned as *Shelby Lowry v.*
15 *Woodstock's Pizza, Inc.*, San Diego County Case Number Case No. 37-2021-00018474-CU-OE-CTL,
16 shall be resolved pursuant to the terms of the Stipulation by entry of Judgment. Further, the Court
17 finds and determines that in the event that the Effective Date occurs, all Class Members are bound by
18 the Stipulation, have released their claims as set forth in the Stipulation, and are permanently barred
19 from prosecuting against Defendant any individual or class claims released pursuant to the
20 Stipulation. All Class Members are bound by the Stipulation as to the claims under the Private
21 Attorneys General Act, have released their claims under the Private Attorneys General Act against
22 Defendant as set forth in the Stipulation, and are permanently barred from prosecuting against
23 Defendant any Private Attorneys General Act claims released pursuant to the Stipulation.

24 15. The Court reserves exclusive and continuing jurisdiction over the Litigation, the Class
25 Representative, the Class Members, and Defendant for the purposes of supervising the
26 implementation, enforcement, construction, administration, and interpretation of the Stipulation.

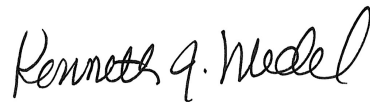
27 16. Pursuant to the Stipulation, Settlement Checks not cashed within 180 days after issuance
28 will be void and the funds represented by the uncashed checks will be paid to Big Table.

1 17. The Court sets a non-appearance case review hearing regarding compliance with all fund
2 distribution requirements under the Stipulation for 12/1, 2023, at 1:30 ^{p.m.} ~~a.m.~~, in Dept. C-66 of the
3 above-entitled Court. A declaration from the Settlement Administrator regarding compliance shall
4 be filed with the Court no later than five court days prior to this date. No appearance by the parties
5 is required at the Order to Show Cause hearing if the Settlement Administrator's declaration is timely
6 filed and the Settlement Administrator reports that all of the distributions under the Settlement are
7 complete.

8 18. In accordance with California Rule of Court 3.771(b), the parties are ordered to give notice
9 of this final Order and the Judgment to all Class Members by posting the Order and the Judgment on
10 the Settlement Administrator's website.

11 IT IS SO ORDERED.

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13 Date: 3/24/2023



Judge Kenneth J. Medel