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Attorneys for Plaintiff SALVADOR GONZALEZ

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/12/2023 at 12:14:00 PM
Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

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

SALVADOR GONZALEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

A M CASTANEDA, INC., a California
corporation dba CASTANEDA'S MEXICAN
FOOD; and DOES 1 through 10, inclusive,

Defendants

Case No.: 37-2021-00017374-CU-OE-CTL

CLASS ACTION

[Hon. Timothy Taylor, Dept. C-72]

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

*[Filed with Plaintiff's Notice of Motion and
Motion for Final Approval, and the
Declarations of Kane Moon and Cassandra
Polites in Support of Motion]*

FINAL APPROVAL HEARING:

Date: September 8, 2023

Time: 1:30 p.m.

Dept.: C-72

Complaint filed: April 20, 2021

Trial date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 On May 31, 2023, the Court entered an Amended Order granting Plaintiff Salvador
3 Gonzalez' ("Plaintiff") Motion for Preliminary Approval of Class Action Settlement, conditional
4 class certification, and approval of Class Notice, and setting a Final Approval Hearing (the
5 "Preliminary Approval Order"), thereby preliminarily approving a settlement of the above-entitled
6 action (the "Action") that was reached between Plaintiff and Defendant A M Castaneda, Inc. dba
7 Castaneda's Mexican Food. ("Defendant," and together with Plaintiff, the "Parties"), in accordance
8 with the Parties' Joint Stipulation of Class Action Settlement (the "Settlement" or "Settlement
9 Agreement"). The Settlement Agreement was attached as Exhibit 1 to the Declaration of Kane Moon
10 in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, and which,
11 together with the exhibit annexed thereto, set forth the terms and conditions for settlement of the
12 Action. The Court now has before it a Proposed Final Order and Judgment to finally approve the
13 Settlement.

14 Due and adequate notice having been given to Class Members, and the Court having reviewed
15 the Settlement Agreement and duly considered Plaintiff's Motion for Final Approval of Class Action
16 Settlement, the supporting declarations and exhibits thereto, all other papers filed and proceedings
17 had hereto, the record in this Action, and any oral argument, and good cause appearing,

18 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

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

21 2. Plaintiff's Motion for Final Approval, including a motion for payment of attorneys'
22 fees and litigation costs to Class Counsel, class representative service award, payment of the
23 Settlement Administrator's fees, and the PAGA Penalty Payment to the California Labor and
24 Workforce Development Agency (the "LWDA") (collectively "Motion for Final Approval"), and
25 whether the Settlement should be finally approved as fair, reasonable, and adequate as to Class
26 Members, came before Department C-72 of this Court, the Honorable Timothy Taylor presiding, on
27 September 8, 2023.

28 3. The Court finds that the Settlement Agreement appears to have been made and entered

1 into in good faith, the terms of which are fair, reasonable, and adequate; was reached following
2 meaningful discovery and investigation conducted by Plaintiff and his counsel of record (“Class
3 Counsel”); is the result of serious, informed, adversarial, and arms-length negotiations between the
4 Parties; and therefore, meets the requirements for final approval. In so finding, the Court has
5 considered all the evidence presented, including evidence regarding the strength of Plaintiff’s claims;
6 the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the
7 amount offered in the Settlement; the extent of investigation and discovery completed; and the
8 experience and views of Class Counsel. The Court has further considered the absence of objections
9 to and requests for exclusion from the Settlement by Class Members. Accordingly, the Court hereby
10 GRANTS Plaintiff’s Motion for Final Approval and ORDERS Judgment to be entered in
11 accordance with the terms herein.

12 4. The Court certifies, for settlement purposes only, the following Class (the “Settlement
13 Class”): All non-exempt employees of Defendant who worked for Defendant in California at any
14 time from April 18, 2020 through July 8, 2022. Excluded from the Settlement Class are all persons
15 who properly and timely elected to opt out from the Settlement.

16 5. Notwithstanding the submission of a timely request for exclusion, Class Members are
17 still bound by the settlement and release of the Released PAGA Claims or remedies under the
18 Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal. 4th 969, as requests to be excluded
19 from the Settlement do not apply to the Released PAGA Claims.

20 6. The deadline to request exclusion from or to submit written objections to the
21 Settlement was July 3, 2023. No requests for exclusion or written objections were received.

22 7. The Notice of Proposed Class Action Settlement (the “Notice”), which was attached
23 to the Settlement Agreement as Exhibit A and provided to the Class pursuant to the plan for
24 distribution described under the Settlement Agreement, conformed with the requirements of
25 California Rules of Court 3.766 and 3.769, and constituted the best notice practicable under the
26 circumstances, by providing individual and adequate notice of the proceedings and of the matters set
27 forth therein to Class Members. The Notice fully satisfied the requirements of due process and
28 provided the Class Members with adequate instructions and a variety of means to obtain additional

1 information.

2 8. A full opportunity has been afforded to the Settlement Class Members to participate
3 in the Final Approval Hearing, and all Settlement Class Members and other persons wishing to be
4 heard have been heard and/or had an opportunity to be heard. The Settlement Class Members have
5 had a full and fair opportunity to exclude themselves from the Settlement or object to the Settlement.
6 Accordingly, the Court determines that all Settlement Class Members who did not timely and validly
7 opt out of the Settlement (“Participating Class Members”) are bound by this Final Order and
8 Judgment.

9 9. **Terms of Releases.** By operation of this Final Order and Judgment, and upon
10 Defendant’s payment of all sums due pursuant to this Settlement, and except as to such rights or
11 claims as may be created by this Settlement, the Class Representatives, the Class and each Class
12 Member who has not submitted a valid and timely request for exclusion as to claims other than the
13 PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from
14 the Settlement of Class claims, will release claims as follows:

15 a. **Identity of Released Parties.** The released parties are Defendant, and each
16 of its/their former and present direct and/or indirect owners, dba’s, affiliates, parents, subsidiaries,
17 brother and sister corporations, divisions, related companies, successors and predecessors, and
18 current and former employees, attorneys, officers, directors, shareholders, owners, trustees,
19 attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants,
20 insurers, representatives, administrators, employee benefit plans, and assigns of said entities
21 (collectively “Releasees”).

22 b. **Date Release Becomes Effective.** The Released Claims and Released PAGA
23 Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction
24 of Defendant’s obligation to provide to the Settlement Administrator a sum in the amount required
25 to satisfy all required payments and distributions pursuant to this Settlement and the Order and
26 Judgment of final approval. Class Members will not release the Released Claims or Released PAGA
27 Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all
28 amounts owing under the Settlement.

1 c. **Claims Released by Settlement Class Members.** Each and every Class
2 Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has
3 submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the
4 release of Released PAGA Claims), hereby releases Releasees from the following claims for the
5 entire Class Period:

6 i. Any and all claims stated in the Action, or that could have been stated
7 based on the facts alleged in the Action, including but not limited to all state wage and hour claims
8 (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime,
9 off-the-clock work, meal periods, rest periods, unreimbursed business expenses, wage statement
10 violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages
11 and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210,
12 216, 218.6, 226, 226.3 , 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1198, 2802 derivative claims
13 under California Business & Professions Code §§ 17200 et seq., and all claims under the governing
14 Wage Order, and FLSA ("Released Claims");

15 ii. As to any Class Member who cashes their Settlement Payment, the
16 Settlement Administrator shall include language on the Settlement Payments that informs the Class
17 Members that the signing and negotiation of that check shall serve as the Class Member's consent
18 to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act
19 that are alleged in the Action or related to the claims stated or that could have been stated in the
20 Action, implicitly or explicitly.

21 d. **Claims Released by the Class, Including PAGA Employees.** All Class
22 Members, including all PAGA Employees, release the Released PAGA Claims, regardless of
23 whether they have requested exclusion from the Settlement as to Class claims.

24 10. The Parties shall bear their own respective attorneys' fees and costs, except as
25 otherwise provided for in the Settlement Agreement and approved by the Court.

26 11. The Court finds that the Gross Settlement Amount, the Net Settlement Amount, and
27 the methodology used to calculate individual settlement payments to Participating Class Members
28 and PAGA Employees are fair and reasonable. The Court thus authorizes the Settlement

1 Administrator to pay settlement allocations in accordance with the terms of the Settlement
2 Agreement. Defendant shall pay into a common fund a total of \$488,372.97¹ (the “Gross Settlement
3 Amount”) to resolve this Action. Defendant shall fund the Gross Settlement Amount, and also fund
4 the amounts necessary to fully pay the employer’s share of payroll taxes on the wage portion of
5 Settlement Class Payments, as calculated by the Administrator, by transmitting the funds to the
6 Administrator no later than 120 days after the Effective Date, as that term is defined under the
7 Settlement Agreement. Payments to Class Members shall be distributed within 14 calendar days after
8 the receipt of funding and in accordance with the terms of the Settlement Agreement.

9 12. A total amount of \$30,000.00 shall be allocated to resolution of the Released PAGA
10 Claims under the Private Attorneys General Act of 2004 (“PAGA”), and distributed as follows: 25%
11 (i.e., \$7,500.00) to PAGA Employees and 75% (i.e., \$22,500.00) to the LWDA. The LWDA’s claims
12 for the Released PAGA Claims are hereby extinguished.

13 13. The Court confirms the appointment of Plaintiff Salvador Gonzalez as the Class
14 Representative. In addition to any recovery that Plaintiff is eligible to receive under the Settlement
15 Agreement as a Class Member, the Court approves and orders a service payment in the amount of
16 \$7,500.00 from the Gross Settlement Amount to Plaintiff for his role and service as the Class
17 Representative, for the risks and work attendant to that role, and for his general release of claims,
18 both known and unknown, and waiver of Section 1542 rights.

19 14. The Court confirms the appointment of Moon Law Group, PC as Class Counsel, as
20 they are experienced in wage and hour class action litigation, have no apparent conflicts of interest
21 with Plaintiff or other Class Members, and have adequately represented Class interests. The Court
22 approves and orders the payment to Class Counsel from the Gross Settlement Amount for reasonable
23 attorneys’ fees in the amount of \$137,272.50, as well as \$14,003.65 for reimbursement of litigation
24 costs actually incurred. The Court finds that the fees and costs amounts are reasonable in light of the
25 benefits provided to the Class.

26 15. The Court confirms the appointment of ILYM Group, Inc. as the Settlement
27

28 ¹ The Court notes that the escalator clause under the Settlement Agreement was triggered,
and that Defendant agreed to increase the Gross Settlement Amount accordingly.

1 Administrator, who has fulfilled its initial notice and reporting duties owed under the Settlement
2 Agreement. The Court approves and orders the payment of \$10,990.00 from the Gross Settlement
3 Amount to ILYM Group, Inc. for the costs of settlement administration.

4 16. In accordance with California Rule of Court 3.771(b), notice of this Final Order and
5 Judgment will be given to the Class by the Settlement Administrator who will post the Final Order
6 and Judgment on a website maintained by the Administrator, the address of which was provided to
7 Class Members in the Notice, for a period of not less than 90 calendar days after entry.

8 17. This Final Order and Judgment is intended to be a final disposition of the Action in
9 its entirety and is intended to be immediately appealable.

10 18. The obligations set forth in the Settlement Agreement are deemed part of this Final
11 Order and Judgment, and the Parties are ordered to carry out the Settlement Agreement according to
12 its terms and provisions.

13 19. Following entry of this Final Order and Judgment, and without affecting the finality
14 thereof, the Court shall retain jurisdiction over the Parties, the Settlement Administrator, and this
15 Action for the purpose of implementing, enforcing, and/or administering the Settlement or enforcing
16 the terms of the Court's Final Order and Judgment until all payments and obligations contemplated
17 by this Settlement have been fully carried out.

18 20. The Settlement Agreement is finally approved but is not an admission by Defendant
19 of the validity of any claims in this Action, or of any wrongdoing by Defendant or of any violation
20 of law. Neither the Settlement Agreement nor any related document shall be offered or received in
21 evidence in any civil, criminal, or administrative action or proceeding other than such proceedings
22 as may be necessary to consummate or enforce the Settlement.

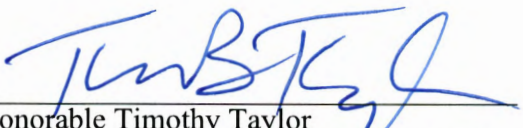
23 21. The Court sets a Non-Appearance Hearing (Case Review) re: Distribution on
24 _____, 202__ at _____ a.m./p.m. in Department C-72. Class Counsel are ordered to
25 file a final report and declaration by the Settlement Administrator regarding settlement distribution
26 no later than _____. No appearance is required at the Case Review if the Settlement
27 Administrator's declaration filed prior to the hearing reports that all the distributions under the
28 Settlement Agreement are complete.

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IT IS SO ORDERED.

DATE: 9/12/23

2021-17374


Honorable Timothy Taylor
Judge of the Superior Court, San Diego County

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
7 1880, Los Angeles, California 90017. On September 8, 2023, I served the foregoing document
8 described as:

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

11 X by E-mailing ____ the original X a true copy to the following:

12 DAVID G. MOLINARI
13 MANDY D. HEXOM
14 **FREEMAN MATHIS & GARY, LLP**
225 Broadway, Suite 1460
San Diego, CA 92101
dmolinari@fmglaw.com
mhexom@fmglaw.com

15 *Attorney For Defendant AM Castaneda, Inc. dba Castaneda's Mexican Food*

16 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
17 California, by e-mail delivery on the parties listed herein at their most recent known e-
18 mail address or e-mail of record in this action.

19 X (State) I declare under penalty of perjury under the laws of the State of California
20 that the above is true and correct.

21 Executed on September 8, 2023, at Los Angeles, California.

22 Noelia Alonso Esteban

23 Name

