

LAW OFFICES OF
THOMAS M. DIACHENKO, APC
1916 Third Avenue
San Diego, CA 92101
Thom@DiachenkoLaw.com
(619) 699-5870

Thomas M. Diachenko (CSBN 140763)

W LAW
1916 3rd Ave
San Diego, CA 92101
jwhooper@wlawinc.com
(619) 432-2836

Jason Whooper (CSBN 279972)

Counsel for Plaintiff, Katherine Hopper

FISHER & PHILLIPS LLP
2050 Main Street | Suite 1000
Irvine, CA 92614
ghoroupian@fisherphillips.com
(949) 798-2145

Grace Y. Horoupian (CSBN 180337)

Counsel for Defendants FM Orange County, LLC, and William Story

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

KATHERINE HOPPER, as an individual and on
behalf of other aggrieved employees and the
State of California,

Plaintiff,

v.

FM ORANGE COUNTY LLC, a California
limited liability company; BBB ORANGE
COUNTY LLC, a California limited liability
company; WILLIAM STORY, an individual;
TIM ROGERS, an individual; MARK
THOMAS, an individual; and CHRIS BERLIN,
an individual; and DOES 1 - 20, inclusive,

Defendants.

CASE NO: 30-2021-01199454-CU-OE-CJC

**[PROPOSED] ORDER APPROVING PAGA
SETTLEMENT**

Filed: May 5, 2021
Judge: Hon. Randall J. Sherman
Dept: CX105
Trial: TBD

1
2 **[PROPOSED] ORDER**

3 This Court has reviewed the stipulation and supplemental documents submitted by Plaintiff
4 Katherine Hopper (“Plaintiff”) and Defendant FM Orange County, LLC (“Defendant”)
5 (collectively, the “Parties”) in support of approval of a PAGA Settlement pursuant to the
6 California Labor Code Private Attorneys General Act of 2004, California Labor Code section
7 2698 et seq. (“PAGA”). The PAGA Settlement and Release Agreement (“PAGA Settlement,” or
8 “PAGA Agreement”), is attached hereto as **Exhibit 1**. Based on this review, and the findings
9 below, the Court finds good cause to enter this order.

10 **FINDINGS:**

11 1. Unless otherwise specified, defined terms in this Order granting approval of the
12 PAGA Settlement (“Order”) have the same definition as the terms of the PAGA Settlement.

13 2. The Court has jurisdiction over the subject matter of the PAGA cause of action,
14 which was not submitted to binding arbitration, over all hourly paid, non-exempt employees of
15 Defendant who worked for Defendant from May 7, 2020 through August 23, 2023 (“PAGA
16 Members” and “PAGA Period”), and over those persons or entities undertaking affirmative
17 obligations under this PAGA Settlement.

18 3. On May 7, 2021, Plaintiff served a notice letter to the California Labor and
19 Workforce Development Agency (“LWDA”) and Defendant, pursuant to California Labor Code
20 Section 2699.3, to notify the LWDA of the alleged California Labor Code violations. The LWDA
21 did not respond to Plaintiff’s LWDA Notice letter within the statutorily prescribed 60-day time-
22 period, allowing Plaintiff to proceed with the 12th cause of action for PAGA violations and
23 penalties.

24 4. On May 3, 2021, Plaintiff filed her lawsuit against Defendant, *entitled Katherine*
25 *Hopper v. FM Orange County LLC, et al.*, case number 30-2021-01199454-CU-OE-CJC, wherein
26 she asserted causes of action for (1) failure to pay overtime, (2) failure to pay premiums, (3)
27 failure to indemnify, (4) records violation, (5) failure to timely pay wages upon termination, (6)
28 unfair business practices, (7) gender based harassment/discrimination, (8) failure to prevent

1 harassment (9) violation of public policy, (10) retaliation, and (11) Intentional Infliction of
2 Emotional Distress. On July 12, 2021, after the required 60-day notice period expired, Plaintiff
3 filed a First Amended Complaint adding a cause of action under the Private Attorneys General Act
4 (PAGA), Cal. Lab. Code § 2698 et seq. based on the alleged violations of the Labor Code and
5 Wage Orders. In doing so, Plaintiff on behalf of the State of California, sought to represent herself
6 and all hourly paid, non-exempt employees of Defendant who were employed by Defendant from
7 May 7, 2020, through the present date (“PAGA Members” and “PAGA Period”). On October 7,
8 2022, Plaintiff filed a Second Amended Complaint.

9 5. Thereafter, the Parties stipulated to submit Plaintiff’s individual claims to
10 arbitration and to stay the remaining PAGA cause of action. The proposed Order submitting the
11 individual claims to binding arbitration was signed and entered by the Court on November 15,
12 2022.

13 6. The Parties expressly acknowledge in the PAGA Settlement that the PAGA
14 Settlement is entered into solely for the purpose of compromising significantly disputed claims,
15 and that nothing contained therein is an admission of liability or wrongdoing by Defendant.

16 7. The Court determines that there is sufficient evidence to determine that the PAGA
17 Settlement is not “unjust, arbitrary and oppressive, or confiscatory” but was entered into in good
18 faith, is fair, reasonable, and adequate under the circumstances, and that the Parties have satisfied
19 the standards and applicable requirements for approval of a settlement of claims brought under the
20 PAGA.

21 8. The Court finds that pursuant to California Labor Code Section 2699(l)(2) and
22 (l)(4), the LWDA was given timely notice of the PAGA Settlement. On August 23, 2023, Plaintiff
23 submitted to the LWDA a notice of the PAGA Settlement, attached to which was a copy of the
24 PAGA Settlement & Release Agreement. Plaintiff’s notice of PAGA Settlement complied with
25 the requirements of California Labor Code section 2699(l)(2).

26 **IT IS HEREBY ORDERED THAT:**

27 1. The terms of the PAGA Settlement are approved under California Labor Code
28 section 2699(l)(2).

1 2. The Court affirms approval of the PAGA Settlement in the attached **Exhibit 1** as to
2 the following group of individuals, collectively referred to as the “PAGA Members”: all hourly
3 paid, non-exempt employees of Defendant who were employed by Defendants at any time from
4 May 7, 2020 through August 23, 2023.

5 3. Upon the Effective Final Settlement Date and payment by Defendant of the Gross
6 Settlement Amount of \$6,000 as set forth in Exhibit 1, this PAGA Settlement may have res
7 judicata or collateral estoppel effect on ~~forever bars~~ Plaintiff, the LWDA, and all PAGA Members
8 on behalf of themselves or as representatives acting as proxy or agent of the LWDA, and each of
9 their heirs, executors, administrators, attorneys, agents, predecessors, successors, and assigns
10 (“Releasing Parties”), for the period spanning May 7, 2020 through date of approval of this
11 settlement, from pursuing any action for claims, rights, demands, liabilities and causes of action
12 for civil penalties under the PAGA against Defendant and each of its parents, subsidiaries, and
13 related entities, and its officers, directors, shareholders, persons, current and former employees,
14 including but not limited to William Story, agents, servants, representatives, members, attorneys,
15 insurers, re-insurers, assigns, and affiliates and any and all other entities with whom it has been, is
16 now, or may hereafter be affiliated (“Released Parties”) based on the factual allegations and Labor
17 Code Sections alleged or that could have been alleged against the Released Parties arising out of
18 the facts, circumstances, and primary rights at issue in the First and Second Amended Complaint,
19 including but not limited to allegations of, and/or violation of, California Labor Code § § 201 -,
20 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
21 1197.1, 1198, (the “PAGA Released Claims”). This release applies whether or not a given PAGA
22 Member receives or cashes his or her portion of the Net PAGA Settlement allocable to each
23 PAGA Member as consideration for the settlement and release of claims for penalties under the
24 PAGA (“PAGA Settlement Share”). Notwithstanding the above, the PAGA Settlement does not
25 release the remaining Defendants in this lawsuit for any PAGA Members employed by BBB
26 Orange County, LLC. Any PAGA claims alleged against the non-settling Defendants remain
27 intact.

28 4. The total PAGA Settlement amount of \$6,000, the Net PAGA Settlement, and the

1 methodology used to calculate and pay each PAGA Settlement Share, in accordance with the
2 PAGA Settlement, is approved under California Labor Code section 2699(1)(2).

3 5. The Court approves an award of \$1,000.00 in attorneys' fees from the Gross
4 Settlement Amount to Plaintiff's Counsel as attorney fees. The Court approves an award of up to
5 \$1,000.00 to the Settlement Administrator, Phoenix, from the Gross Settlement Amount. The
6 remaining funds after the amounts allocated to the attorney fees and settlement administrator have
7 been deducted from the Gross Settlement Amount will be referred to as the "Net PAGA
8 Settlement" totaling \$4,000.00 in PAGA civil penalties. A total of seventy-five percent (75%), or
9 \$3,000.00, of the Net PAGA Settlement shall be paid to the Labor and Workforce Development
10 Agency ("LWDA"). The remaining twenty-five percent (25%), or \$1,000.00, of the Net PAGA
11 Settlement shall be payable to the PAGA Members as set forth in the PAGA Settlement, Exhibit 1
12 herein.

13 6. All Individual Settlement Checks will expire one hundred and eighty (180)
14 calendar days after the initial mailing of the original Payment Packets to the PAGA Employees,
15 and thereafter, shall be cancelled. **Any check that is required to be resent to PAGA Employee**
16 **shall expire one hundred eighty (180) calendar days after the second mailing of the check.** If
17 any funds remain in the Settlement Administration Account as a result of cancelled Individual
18 Settlement Checks, such funds shall be transmitted to the State Controller's Office Unclaimed
19 Property Fund in the name of each PAGA Employee whose check is voided. All duties set forth
20 herein shall be included in the Settlement Administration Costs and paid from the Gross
21 Settlement Amount.

22 7. Pursuant to Code of Civil Procedure section 664.6, after entry of the request for
23 dismissal of the Action, with prejudice, the Court shall have continuing jurisdiction solely for
24 purposes of addressing: (i) the interpretation and enforcement of the terms of the PAGA
25 Settlement, (ii) PAGA Settlement administration matters, and (iii) such matters as may be
26 appropriate under court rules or applicable law, or as set forth in the PAGA Settlement.

27 8. Nothing in this Order or PAGA Settlement is intended or will be construed as an
28 admission of liability or wrongdoing by Defendant. This PAGA Settlement and the fact that

1 Plaintiff and Defendant are willing to settle the Action will have no bearing on, and will not be
2 admissible in connection with, any litigation (other than solely in connection with the PAGA
3 Settlement).

4 9. Within ten (10) calendar days after entry of this Order approving the PAGA
5 Settlement, Plaintiff shall submit a copy of the Order to the LWDA in compliance with California
6 Labor Code section 2699(1)(3).

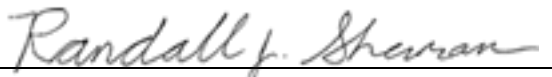
7 10. Within thirty (30) calendar days after the Settlement Administrator distributes the
8 Net PAGA Settlement to the LWDA and PAGA Members, the Settlement Administrator shall
9 provide Plaintiff a declaration confirming the same, and within fourteen (14) calendar days after
10 Plaintiff receives the Settlement Administrator's declaration, Plaintiff shall file a request for
11 dismissal with prejudice of the Action for FM Orange County and William Story, only.

12 11. The ADR Review Hearing set for November 30, 2023 is ordered off calendar. The
13 court sets a Final Report Hearing for August 9, 2024 at 10:00 a.m., to confirm that distribution
14 efforts are fully completed, including the distribution of uncashed aggrieved employee checks
15 after 180 days, that the Administrator's work is complete, and that the court's file thus may be
16 closed. The parties must report to the court the total amount that was actually paid to the
17 aggrieved employees. All supporting papers must be filed at least 16 days before the Final Report
18 Hearing date.

19 12. Plaintiff is ordered to give notice of this Order to the LWDA and to defendants.

20 **IT IS SO ORDERED.**

21
22 DATED: **November 6, 2023**

23 
24 Hon. Randall J. Sherman
25 Judge of the Superior Court
26
27
28