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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
SECOND PAGA SETTLEMENT**

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

1 **[PROPOSED] ORDER**

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

9 **FINDINGS:**

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

12 2. The Court has jurisdiction over the subject matter of the PAGA cause of action,
13 which was not submitted to binding arbitration, over all hourly paid, non-exempt employees of
14 Defendant who worked for Defendant from January 9, 2021, through the date of this Order, (“PAGA
15 Members” and “PAGA Period”), and over those persons or entities undertaking affirmative
16 obligations under this PAGA Settlement.

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

23 4. On May 3, 2021, Plaintiff filed her lawsuit against Defendant, *entitled Katherine*
24 *Hopper v. FM Orange County LLC*, et al., case number 30-2021-01199454-CU-OE-CJC, wherein
25 she asserted causes of action for (1) failure to pay overtime, (2) failure to pay premiums, (3) failure
26 to indemnify, (4) records violation, (5) failure to timely pay wages upon termination, (6) unfair
27 business practices, (7) gender based harassment/discrimination, (8) failure to prevent harassment,
28 (9) violation of public policy, (10) retaliation, and (11) Intentional Infliction of Emotional Distress.

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

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

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

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

19 8. The Court finds that pursuant to California Labor Code Section 2699(l)(2) and (l)(4),
20 the LWDA was given timely notice of the PAGA Settlement. On January 8, 2024, Plaintiff
21 submitted to the LWDA a notice of the PAGA Settlement, attached to which was a copy of the
22 PAGA Settlement & Release Agreement. Plaintiff’s notice of PAGA Settlement complied with the
23 requirements of California Labor Code section 2699(l)(2).

24 **IT IS HEREBY ORDERED THAT:**

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

27 2. The Court affirms approval of the PAGA Settlement in Exhibit 1 attached to the Joint
28 Stipulation to Approve Second PAGA Settlement as to the following group of individuals,

1 collectively referred to as the “PAGA Members”: all current and former marketing staff employees
2 of Defendant who were employed by Defendants at any time from January 9, 2021 through the date
3 of this Order.

4 3. Upon the Effective Final Settlement Date and payment by Defendant of the Gross
5 Settlement Amount of \$6,000 as set forth in Exhibit 1, this PAGA Settlement may have res judicata
6 or collateral estoppel effect on Plaintiff, the LWDA, and all PAGA Members on behalf of
7 themselves or as representatives acting as proxy or agent of the LWDA, and each of their heirs,
8 executors, administrators, attorneys, agents, predecessors, successors, and assigns (“Releasing
9 Parties”), for the period spanning January 9, 2021 through date of approval of this settlement, from
10 pursuing any action for claims, rights, demands, liabilities and causes of action for civil penalties
11 under the PAGA against Defendant and each of its parents, subsidiaries, and related entities, and its
12 officers, directors, shareholders, persons, current and former employees, including but not limited
13 to Chris Berlin, Tim Rogers, and Mark Berlin, agents, servants, representatives, members, attorneys,
14 insurers, re-insurers, assigns, and affiliates and any and all other entities with whom it has been, is
15 now, or may hereafter be affiliated (“Released Parties”) based on the factual allegations and Labor
16 Code Sections alleged or that could have been alleged against the Released Parties arising out of the
17 facts, circumstances, and primary rights at issue in the First and Second Amended Complaint,
18 including but not limited to allegations of, and/or violation of, California Labor Code sections 201-
19 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
20 1198, 2699 and 2802 (the “PAGA Released Claims”). This release applies whether or not a given
21 PAGA Member receives or cashes his or her portion of the Net PAGA Settlement allocable to each
22 PAGA Member as consideration for the settlement and release of claims for penalties under the
23 PAGA (“PAGA Settlement Share”). As a result of the first Order Approving PAGA Settlement that
24 the Court signed November 6, 2023, previously releasing all PAGA claims against Defendants FM
25 Orange County LLC and William Story in a prior separate PAGA settlement, this PAGA Settlement
26 releases all remaining PAGA claims against all remaining Defendants in this lawsuit.

27 4. The total PAGA Settlement amount of \$6,000, the Net PAGA Settlement, and the
28 methodology used to calculate and pay each PAGA Settlement Share, in accordance with the PAGA

1 Settlement, is approved under California Labor Code section 2699(l)(2).

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

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

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

25 8. Nothing in this Order or PAGA Settlement is intended or will be construed as an
26 admission of liability or wrongdoing by Defendant. This PAGA Settlement and the fact that Plaintiff
27 and Defendant are willing to settle the Action will have no bearing on, and will not be admissible
28 in connection with, any litigation (other than solely in connection with the PAGA Settlement).

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

4 10. Within thirty (30) calendar days after the Settlement Administrator distributes the
5 Net PAGA Settlement to the LWDA and PAGA Members, the Settlement Administrator shall
6 provide Plaintiff a declaration confirming the same, and within fourteen (14) calendar days after
7 Plaintiff receives the Settlement Administrator's declaration, Plaintiff shall file a request for
8 dismissal with prejudice of the Action for BBB Orange County LLC, Chris Berlin, Tim Rogers, and
9 Mark Thomas.

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

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

17 **IT IS SO ORDERED.**

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20 DATED: _____

By:

Hon. Randall J. Sherman
Judge of the Superior Court