

GRAHAM HOLLIS APC
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SAN DIEGO, CALIFORNIA 92103

MAR 14 2023

Filed APR 19 2023
BRANDON E. RILEY CLERK
By [Signature]
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

CHRISTIAN GONZALEZ TUNCHEZ and
behalf MADISON of all others COOPER,
similarly individually, situated,

Plaintiff,

v.

THOMAS CUISINE MANAGEMENT, LLC, a
limited liability company; and DOES 1
THROUGH 10, inclusive,

Defendants.

Case No.: STK-CV-UOE-2021-0009373

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

Date: 4-19-23
Time: 9:06 am
Dept: 10C
Judge: Hon. Jayne Lee

First Amended Complaint Filed: 10/28/2022
Trial Date: None set

Plaintiffs' Motion for Preliminary Approval of Class and PAGA Action Settlement came before this Court on [DATE]. The Court, having considered the proposed Stipulation for Class and PAGA Action Settlement (the "Settlement Agreement"), Plaintiffs' Motion for Preliminary Approval, and all papers filed in support, **HEREBY ORDERS THE FOLLOWING:**

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

1 which is attached to the Declaration of Graham Hollis as Exhibit 1.

2 2. It appears to the Court on a preliminary basis that the terms of the Settlement Agreement
3 are fair, adequate, and reasonable. It appears to the Court that investigation and research have been
4 conducted such that counsel for the Parties are at this time able to reasonably evaluate their respective
5 positions. It further appears to the Court that settlement, at this time, will avoid substantial additional
6 costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution
7 of the Action. It further appears that the Settlement Agreement has been reached as the result of intensive,
8 serious and non-collusive, arms-length negotiations.

9 3. The Court preliminarily finds that the terms of the Settlement Agreement appear to be
10 within the range of reasonableness of a settlement that could ultimately be given final approval by this
11 Court. Indeed, the Court has reviewed the monetary recovery that is being granted as part of the Settlement
12 and preliminarily finds that the monetary settlement awards made available to all Class Members are fair,
13 adequate, and reasonable when balanced against the probable outcome of further litigation relating to
14 liability and damages issues.

15 4. The Court hereby conditionally certifies the Settlement Class for settlement purposes only.

16 5. The Court grants conditional certification of the following Settlement Classes:

17 **The Class:** All current and former non-exempt employees who worked for Defendant at
18 any time from January 11, 2017 to October 4, 2022.

19 **Vacation Subclass:** All members of the Class who were classified as "part-time" but
20 worked more than 30 hours per week at any time from January 11, 2017, to October 4,
21 2022 and did not receive vacation pay.

22 **Waiting Time Subclass:** All members of the Class whose employment with Defendant
23 ended at any time from January 11, 2018, to October 4, 2022.

24 6. The Court preliminarily approves the appointment of Plaintiffs Christian Gonzalez
25 Tunchez and Madison Cooper as Class Representatives.

26 7. The Court preliminarily approves the appointment of Plaintiffs' Counsel Graham S.P.
27 Hollis, Erik A. Dos Santos, Hali M. Anderson of GrahamHollis APC and Kane Moon, Allen Feghali of
28 Moon & Yang, APLC, as Class Counsel. Class Counsel is authorized to act on behalf of Class Members

1 with respect to all acts or consents required by, or which may be given pursuant to, the Settlement
2 Agreement, and such other acts reasonably necessary to consummate the Settlement Agreement. Any
3 Class Member may enter an appearance through counsel of such individual's own choosing and at such
4 individual's own expense. Any Class Member who does not enter an appearance or appear on his or her
5 own will be represented by Class Counsel.

6 8. The Court preliminarily approves the definition and disposition of the Gross Settlement
7 Amount of \$3,350,000.00, on a non-reversionary basis, which is inclusive of: (1) all payments to the
8 Settlement Class Members; (2) the Class Representatives Enhancement Awards of \$10,000 to each Class
9 Representative; (3) Class Counsel's attorney's fees in the amount of \$258,333.33 (or 33 1/3% of the Gross
10 Settlement Amount) and actual litigation costs not to exceed \$22,000; (4) all Settlement Administration
11 Costs not to exceed \$22,000; and (5) the PAGA Payment of \$335,000.00, of which \$251,250 (or 75%)
12 will be paid to the California Labor and Workforce Development Agency and the remainder will be
13 allocated to the PAGA Employees, which are those Class Members who worked for Defendant from
14 January 11, 2020 through October 4, 2022..

15 9. Any remaining unclaimed funds will be delivered to the Participating Class Members if
16 the amount to distribute the uncashed checks does not exceed 50% the administration costs to distribute
17 the uncashed checks. If the amount does exceed the 50% threshold, funds from uncashed or returned
18 checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed
19 Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Participating Class Members
20 who did not cash their checks until such time that they claim their property.

21 10. The Court approves the form and content of the Notice of Class Action Settlement, in
22 substantially the form attached to the Settlement Agreement as **Exhibit A** and finds that the proposed
23 method of disseminating the Class Notice to the Class meets all the due process requirements, provides
24 the best notice practicable under the circumstances, and constitutes due and sufficient notice to all Class
25 Members.

26 11. The Court approves the retention of CPT Group, Inc., ("CPT") as the Settlement
27 Administrator and hereby directs ILYM to provide the approved Class Notice to Class Members and
28 administer the Settlement in accordance with the procedures described in the Settlement Agreement and

the Implementation Schedule set forth below.

12. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, is terminated, cancelled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of the commencement of the litigation.

13. The Court orders the following implementation schedule for further proceedings:

EVENT	DEADLINE
Preliminary Approval Date	TBD
Deadline for Defendant to provide the Settlement Administrator with the Class List and the information necessary to calculate the Compensable Workweeks	No later than ten (10) business days after the Court grants Preliminary Approval
Deadline for Settlement Administrator to mail the Class Notice to Class Members.	No later than ten (10) calendar days after receiving the Class List from Defendant.
Deadline for Class Members to submit any objection to the Settlement Agreement or request exclusion from the Settlement Class. ("Response Deadline")	(60) calendar days from the initial mailing of the Notice to the Class Members, except the deadline will be extended by (10) calendar days for any Class Member who is re-mailed the Notice.
Deadline for the Settlement Administrator to provide a declaration attesting the completion of the Notice process and number valid requests for exclusions	No later than ten (10) calendar days before Plaintiffs' deadline to file the Motion for Final Approval.
Final Approval Hearing	<u>Sept. 29, 2023 at 9:00 AM</u>

14. The Court hereby sets a hearing date for Plaintiffs' Motion for Final Approval of Class Action Settlement and Award of Attorney's Fees, Costs, and Class Representative Service Award on ____

1 9/29/23 at 9:00AM in Department 10C of this Court.

2 The Court reserves the right to adjourn or continue the date of the final approval hearing and all
3 dates provided for in the Settlement Agreement without further notice to Class Members and retains
4 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

5
6 **IT IS SO ORDERED.**

7 Dated: 4/19/23

8 

9 Honorable Jayne Lee
10 Judge of the Superior Court **Jayne C. Lee**