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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

SEP 02 2022

BY A. Prandini
 A. PRANDINI, DEPUTY

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO

13 ISABELLA CARO, on behalf of herself and all
 14 others similarly situated and the general public,

Plaintiff,

v.

16 EM KMR LLC dba CHICK-FIL-A/ COLONIES
 17 CROSSROADS FSU (01544); and DOES 1 to
 18 100,

Defendants.

) Case No. CIVSB 2126991
) Hon. Donald Alvarez
) Dept. S-23

) CLASS ACTION

) **[PROPOSED] ORDER GRANTING**
) **PLAINTIFF'S MOTION FOR**
) **PRELIMINARY APPROVAL OF CLASS**
) **AND PAGA REPRESENTATIVE**
) **ACTION SETTLEMENT**

) Date: September 1, 2022
) Time: 8:30 a.m.
) Dept.: S-23

) Action filed: September 17, 2021

**~~[PROPOSED]~~ ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF
 CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT**

1 WHEREAS, this Action is pending before this Court as a putative class action lawsuit brought
2 by Isabella Caro the Named Plaintiff ("Plaintiff" or "Named Plaintiff") against Defendant EM KMR,
3 LLC dba Chick-Fil-A/Colonies Crossroads FSU (01544) (hereinafter referred to as "Defendant");
4 and

5 WHEREAS, Class Counsel applied to this Court for an order preliminarily approving the
6 settlement of the Action in accordance with the Stipulation of Class and PAGA Representative
7 Action Settlement (the "Stipulation" or "Settlement" or "Agreement"), which, together with the
8 exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement and final
9 resolution of the Action upon the terms and conditions set forth therein; and the Court having read
10 and considered the Stipulation and the exhibits annexed thereto;

11 NOW, THEREFORE, IT IS HEREBY ORDERED:

12 1. This Order incorporates by reference the definitions in the Stipulation, and all terms
13 defined therein shall have the same meaning in this Order as set forth in the Stipulation. Per the
14 Parties' Stipulation, the Court hereby conditionally certifies the following Settlement Class:

15 **Settlement Class Members:** all current and former non-exempt hourly individuals
16 who were under the age of 18 at the time of hire by Defendant on or after September
17 17, 2017 through August 31, 2022, who 1) did not later sign arbitration agreements
18 after turning 18 or 2) did not have a parent or other legal guardian co-sign arbitration
19 agreements.

20 2. Upon the Final Approval by the Court of this Settlement Agreement and payment
21 of amounts set forth herein, and except as to such rights or claims as may be created by this
22 Settlement Agreement, each and every Participating Class Member, on behalf of themselves and
23 their heirs and assigns, hereby releases Defendant EM KMR LLC dba Chick-Fil-A/Colonies
24 Crossroads FSU (01544), its present, former, or future parent and/or subsidiary corporations, and
25 each of the foregoing's present, former, or future owners, members, officers, directors,
26 shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and
27 managing agents and any and all agents, legal representatives, and/or attorneys of all of the
28 foregoing entities or individuals (collectively the "Released Parties") from the following rights or

1 claims (the “Released Class Claims”):

2 a. Any and all claims, known or unknown, that: were asserted in any and/or
3 all of the complaints in the Action and/or any of Plaintiff’s letters to the LWDA
4 (including any subsequently amended complaints or letters); and/or any and all
5 claims, known or unknown, that could have been asserted based on any or all the
6 factual allegations in all of the complaints in the Action and/or any of Plaintiff’s
7 letters to the LWDA (including any subsequently amended complaints or letters).
8 This includes but is not limited to claims for or related to: minimum wages,
9 overtime; pay for all hours worked/compensation due for services; off-the-clock
10 work; meal periods; rest periods; meal and/or rest period premiums, including the
11 calculation of the meal and/or rest period premium pay; wage statements;
12 timeliness of wages; payment of wages at termination; maintain accurate and
13 complete records; indemnification of expenditures; unfair competition related to
14 any or all of the foregoing; any unpaid wages or compensation related to any or all
15 of the foregoing; restitution related to any or all of the foregoing; and any
16 penalties, including statutory or civil penalties, related to any or all of the
17 foregoing. This release includes any and all claims pursuant to: California Labor
18 Code sections 201, 201.1, 201.5, 202, 203, 204, 205.5, 210, 218, 218.5, 218.6,
19 219, 226, 226.3, 226.7, 256, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1,
20 1198, 2802; the California Business & Professions Code § 17200; California Code
21 of Regulations Title 8, § 11070; and the California Industrial Welfare Commission
22 Wage Orders 5-2001. The release shall run through August 31, 2022.

23 3. The Court also conditionally approves the PAGA settlement and the defined group of
24 individuals (subject to Plaintiff obtaining Final Approval of the class action settlement) as:

25 **PAGA Representative Action Members:** all current and former non-exempt hourly
26 employees of Defendant who were under the age of 18 at the time of hire, on or after April
27 29, 2021 through August 31, 2022, who 1) did not later sign arbitration agreements after
28 turning 18 or 2) did not have a parent or other legal guardian co-sign arbitration agreements.

1 4. Upon the Final Approval by the Court of this Settlement Agreement and payment of
2 amounts set forth herein, and except as to such rights or claims as may be created by this Settlement
3 Agreement, each and every PAGA Representative Action Member, on behalf of themselves and
4 their heirs and assigns, and irrespective of whether the PAGA Representative Action Member opted
5 out of the class action portion of the Settlement, hereby releases the Released Parties from the
6 following rights or claims (the "Released PAGA Claims"):

7 a. Any and all claims known or unknown, for civil penalties under California
8 Labor Code section 2698 *et seq.* (PAGA) that: were asserted in any and/or all of the
9 complaints in the Action and/or any of Plaintiff's letters to the LWDA (including any
10 subsequently amended complaints or letters); and/or any and all claims, known or
11 unknown, that could have been asserted based on any or all the factual allegations in
12 any and/or all of the complaints in the Action and/or any of Plaintiff's letters to the
13 LWDA (including any subsequently amended complaints or letters). This release
14 includes, but is not limited to, claims for PAGA civil penalties premised on: California
15 Labor Code sections 201, 201.1, 201.5, 202, 203, 204, 205.5, 210, 218, 218.5, 218.6,
16 219, 226, 226.3, 226.7, 256, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1,
17 1198, and 2802; failure to pay minimum wages and overtime; failure to pay for all
18 hours worked/compensation due for services; off-the-clock work; failure to provide
19 meal periods; failure to authorize and permit rest periods; failure to pay meal or rest
20 period premiums, including the calculation of the meal and/or rest period premium
21 pay; failure to provide accurate itemized wage statements; failure to timely pay wages
22 at termination; failure to maintain accurate and complete records; and indemnification
23 of expenditures. The release shall run through August 31, 2022, Should for whatever
24 reason the Settlement not become final, the fact that the Parties were willing to
25 stipulate to class certification as part of the Settlement shall have no bearing on, nor
26 be admissible in connection with, the issue of whether a class should be certified in a
27 non-settlement context.
28

1 5. Named Plaintiff is hereby appointed and designated, for all purposes, as the
2 representative of the Class and Representative Action, and the following attorney is hereby
3 appointed and designated as counsel for the Named Plaintiff, the Class Representatives and the
4 Class: Janelle Carney of Janelle Carney – Attorney at Law, APC (“Class Counsel”). Class Counsel
5 is authorized to act on behalf of Participating Class Members with respect to all acts or consents
6 required by, or which may be given pursuant to, the Settlement, and such other acts reasonably
7 necessary to consummate the Settlement. Any Objecting Class Member may enter an appearance
8 through counsel of such Class Member’s own choosing and at such Class Member’s own expense.

9 6. The Court finds on a preliminary basis that the Settlement appears to be fair,
10 reasonable and adequate, and one that would merit, ultimately, final approval by this Court. The
11 Court has reviewed the Settlement and recognizes the value thereof to the Class Members. The
12 Court finds, on a preliminary basis, that the Settlement is fair, adequate and reasonable as to all
13 Class Members when balanced against the potential outcomes of further litigation relating to
14 liability and damages issues. The Court further finds that the Settlement has been reached as the
15 result of serious and non-collusive, arms-length negotiations by Defendants and Plaintiff (the
16 “Settling Parties”).

17 7. A hearing (the “Settlement Hearing”) shall be held before this Court, located at 247
18 W. Third St. San Bernardino, CA 92415-0210, on December 2, 2022 at 9:00 A.m., in
19 Department S-23, to determine all necessary matters concerning the Settlement, including: whether
20 the proposed settlement of the Action should be finally approved by the Court; whether a Judgment,
21 as provided in the Stipulation, should be entered herein; whether the plan of allocation contained in
22 the Stipulation should be approved as fair, adequate and reasonable to the Class Members; and to
23 finally approve Class Counsel’s Fees Award and Cost Award, the Class Representative’s
24 Enhancement award, payment to the Labor and Workforce Development Agency and the Settlement
25 Administration Costs.

26 8. The Court hereby approves, as to form and content, the Notice, attached as Exhibit 1
27 to the Stipulation. The Court finds that distribution of the Notice, substantially in the manner and
28 form set forth in the Stipulation and this Order, meets the requirements of due process, is the best

1 notice practicable under the circumstances, and will constitute due and sufficient notice to all
2 persons entitled thereto.

3 9. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator and hereby
4 directs the Settlement Administrator to simultaneously mail or cause to be mailed to Class Members
5 the Notice (Exhibit 1) by first class mail at their last known address within ten (10) days of receiving
6 a Class Information from Defendant.

7 10. Any Class Member (as defined by the Stipulation) may choose to opt-out of the
8 Settlement or object to the Settlement as provided in the Notice by following the instructions for
9 requesting exclusion from the Settlement Class or objecting to the settlement. Class Members will
10 have forty-five (45) days from the date of mailing of the Notice in which to postmark objections or
11 a notice of opting out. Prior to the initial mailing, the Settlement Administrator will check all Class
12 Member addresses against the National Change of Address database and shall update any addresses
13 before mailing. Any Notices of Settlement returned to the Settlement Administrator as non-
14 delivered on or before the Response Deadline shall be sent to the forwarding address affixed thereto.
15 If no forwarding address is provided, the Settlement Administrator shall promptly attempt to
16 determine a correct address using a skip-trace, or other search using the name, address and/or Social
17 Security number of the Class Member involved, and shall re-mail the Notice of Settlement. If, after
18 performing a skip-trace search, the Notice of Settlement is still returned to the Settlement
19 Administrator as non-deliverable, the Settlement Administrator will have no further obligation to
20 undertake efforts to obtain an alternative address.

21 11. For a Class Member to object to the class action portion of the Settlement, a Class
22 Member must mail to the Settlement Administrator by the Response Deadline a notice of objection,
23 signed by the Class Member, stating: (i) the Class Member's name; (ii) current address; (iii)
24 telephone number; (iv) dates of employment with Defendant; (v) last 4-digits of his or her Social
25 Security number; and (vi) the basis of the objection, including the reasons why the objector believes
26 that the Court should find that the proposed Settlement is not in the best interests of the Class and
27 the reasons why the Settlement should not be approved. The Class Member must serve a copy of
28 his or her objection on counsel for the Parties by the Response Deadline. The postmark date of the

1 filing and service shall be deemed the exclusive means for determining that the notice of objection
2 is timely. Class Members shall be permitted to withdraw their objections in writing by submitting a
3 withdrawal statement to the Settlement Administrator not later than one (1) business day before the
4 Court's Final Approval hearing, orally at the Final Approval hearing, or as otherwise ordered by the
5 Court. Class Members who do not make and mail written objections in the manner and by the
6 deadline specified above, or at the Final Approval hearing, shall be deemed to have waived any
7 objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to
8 the Settlement.

9 12. The Settlement is not a concession or admission and shall not be used against
10 Defendants or any of the Released Parties as an admission or indication with respect to any claim
11 of any fault or omission by Defendants or any of the Released Parties. Whether or not the Settlement
12 is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct
13 related to the Settlement, nor any reports or accounts thereof, shall in any event be:

14 a. Construed as, offered or admitted in evidence as, received as or deemed to be
15 evidence for any purpose adverse to the settling or Released Parties, including, but
16 not limited to, evidence of a presumption, concession, indication or admission by any
17 of the settling or Released Parties of any liability, fault, wrongdoing, omission,
18 concession or damage; or

19 b. Disclosed, referred to, or offered or received in evidence against any of the
20 settling or Released Parties in any further proceeding in the Action, or in any other
21 civil, criminal or administrative action or proceeding, except for purposes of settling
22 the Action pursuant to the Stipulation.

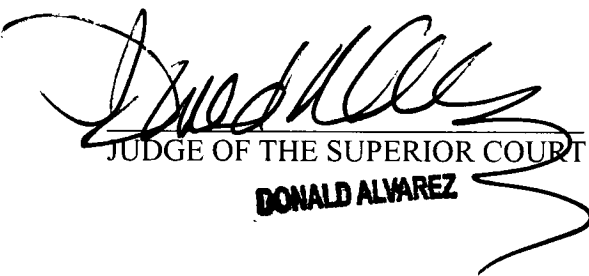
23 13. As of the date this Order is signed, all dates and deadlines associated with the Action
24 shall be stayed, other than those pertaining to the administration of the Settlement of the Action.

25 14. In the event the Settlement does not become effective in accordance with the terms of
26 the Stipulation, or the Settlement is not finally approved, or is terminated, canceled or fails to
27 become effective for any reason, this Order shall be rendered null and void and shall be vacated and
28 the Parties shall revert to their respective positions as of before entering into the Stipulation. If the

1 Court does not grant Final Approval of the Settlement, Plaintiff will withdraw the Second Amended
2 Complaint and it will be void ab initio.

3 The Court reserves the right to adjourn or continue the date of the Settlement Hearing and all
4 dates provided for in the Stipulation without further notice to Class Members, and retains jurisdiction
5 to consider all further applications arising out of or connected with the proposed Settlement.

6
7
8 Dated: 9/14/22


JUDGE OF THE SUPERIOR COURT

DONALD ALVAREZ

9
10
11 APPROVED AS TO FORM AND CONTENT:

12
13 Dated: August 4, 2022

JANELLE CARNEY – ATTORNEY AT LAW, APC

14
15
16 By: S/ Janelle Carney
17 Janelle Carney, Attorney for Plaintiff

18
19 Date: August 4, 2022

FISHER & PHILLIPS, LLP

20
21 S/ Lonnie D. Giamela

22 Lonnie D. Giamela

23 Amy J. Choe

Attorney for Defendant

24 EM KMR, LLC

25 dba Chick-Fil-A/Colonies Crossroads FSU (01544)