

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (SBN #068687)

4 Kyle R. Nordrehaug (SBN #205975)

5 Aparajit Bhowmik (SBN #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858) 551-1223

9 Facsimile: (858) 551-1232

10 Attorneys for Plaintiff

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14
15 ALMA HEYMAN, an individual, on behalf of
16 himself and on behalf of all persons similarly
situated,

17 Plaintiffs,

18 v.

19 RENOIR HM, LLC, a Limited Liability
20 Company; and Does 1 through 50, Inclusive,

21 Defendants.
22
23
24
25
26
27
28

CASE NO.: **CGC-21-595913**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: June 1, 2023

Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Dept.: 302

Action Filed: October 8, 2021

Trial Date: Not set

1 This matter came before the Honorable Richard B. Ulmer of the Superior Court of the
2 State of California, in and for the County San Francisco, on June 1, 2023, for the motion by
3 Plaintiff Alma Heyman ("Plaintiff") for preliminary approval of the class settlement with
4 Defendant Renoir HM, LLC ("Defendant"). The Court, having considered the briefs, argument of
5 counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
6 Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

7 **IT IS HEREBY ORDERED:**

8 1. The Court preliminarily approves the Class Action and PAGA Action Settlement
9 Agreement ("Agreement") submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
10 Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This
11 preliminary approval is based on the Court's determination that the Settlement set forth in the
12 Agreement is within the range of possible final approval, pursuant to the provisions of section 382
13 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

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

16 3. The Gross Settlement Amount is Five Hundred Sixty Thousand Dollars (\$560,000).
17 It appears to the Court on a preliminary basis that the settlement amount and terms are fair,
18 adequate and reasonable as to all potential Class Members when balanced against the probable
19 outcome of further litigation and the significant risks relating to certification, liability and damages
20 issues. It further appears that investigation and research have been conducted such that counsel
21 for the Parties are able to reasonably evaluate their respective positions. It further appears to the
22 Court that settlement at this time will avoid substantial additional costs by all Parties, as well as
23 avoid the delay and risks that would be presented by the further prosecution of the Action. It
24 further appears that the Agreement has been reached as the result of serious and non-collusive,
25 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
26 adequate, and reasonable when balanced against the probable outcome of further litigation and the
27 significant risks relating to certification, liability, and damages issues.

1 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
2 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Twelve
3 Thousand Dollars (\$12,000), and a proposed Class Representative Service Payment to the Plaintiff
4 in an amount not to exceed Ten Thousand Dollars (\$10,000) The Court will not approve the
5 amount of attorneys' fees and costs, nor the amount of any service award, until the Final Approval
6 Hearing. Plaintiff will be required to present evidence supporting these requests prior to final
7 approval.

8 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
9 certification of a class for settlement purposes only. This stipulation will not be deemed
10 admissible in this or any other proceeding should this Settlement not become final. For settlement
11 purposes only, the Court conditionally certifies the following Class: "all individuals who were
12 employed by Defendant in California and classified as hourly, non-exempt employees at any time
13 during the Class Period." The Class Period is December 1, 2018 through December 31, 2022.

14 6. The Court concludes that, for settlement purposes only, the Class meets the
15 requirements for certification under section 382 of the California Code of Civil Procedure in that:
16 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
17 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
18 community of interest amongst the members of the Class with respect to the subject matter of the
19 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class;
20 (d) the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a
21 class action is superior to other available methods for the efficient resolution of this controversy;
22 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an
23 adequate representative of the Class.

24 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
25 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
26 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

27 8. The Court hereby approves, as to form and content, the Court Approved Notice of
28

1 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), submitted
2 as Exhibit A to the Agreement. The Court finds that the Class Notice appears to fully and
3 accurately inform the Class of all material elements of the proposed Settlement, of the Class
4 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
5 Class Member’s right and opportunity to object to the Settlement. The Court further finds that the
6 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
7 and this Order meets the requirements of due process, is the best notice practicable under the
8 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
9 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
10 the Agreement. If a Class Notice Packet is returned because of an incorrect address, the
11 Settlement Administrator will promptly search for a more current address for the Class Member
12 and re-mail the Class Notice Packet to the Class Member no later than seven (7) days after the
13 receipt of the undelivered Class Notice.

14 9. The Court hereby appoints Phoenix Class Action Administration Solutions as
15 Administrator for the Settlement. No later than fifteen (15) calendar days after issuance of this
16 Order, Defendant shall provide to the Administrator with the Class Data. This information will
17 otherwise remain confidential and will not be disclosed to anyone, except as required to applicable
18 taxing authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s
19 express written authorization or by order of the Court. The Administrator will perform address
20 updates and verifications as necessary prior to the mailing of the Class Notice. Using best efforts
21 to mail it as soon as possible, and in no event later than fourteen (14) calendar days after receiving
22 the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class
23 U.S. Mail.

24 10. The Court hereby preliminarily approves the proposed procedure for exclusion
25 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
26 from the Class as provided in the Class Notice by following the instructions set forth in the Class
27 Notice. All requests for exclusion must be postmarked by no later than the Response Deadline,
28

1 which is forty-five (45) calendar days after the Administrator mails the Class Notice Packet to
2 Class Members. If the Class Notice Packet is re-mailed, this Response Deadline will be extended
3 an additional fourteen (14) calendar days. Any person who chooses to opt-out of and be excluded
4 from the Class will not be entitled to any recovery under the Settlement and will not be bound by
5 the Settlement or have any right to object, appeal or comment thereon. Aggrieved Employees shall
6 be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA
7 Claims regardless of whether they opt-out of the Class. Class Members who have not requested
8 exclusion shall be bound by all determinations of the Court, the Agreement, and the Judgment. A
9 request for exclusion applies only to the individual submitting the request for exclusion, and any
10 attempt to effect an opt-out on behalf of any other individual or individuals (including a group,
11 class, or subclass of individuals) is not permitted and will be deemed invalid.

12 11. Any Class Member who has not opted-out may appear at the Final Approval
13 Hearing and may object or express the Member's views regarding the Settlement and may present
14 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
15 and determined by the Court as provided in the Class Notice. Class Members will have until the
16 Response Deadline set forth in the Class Notice to submit their written objections to the
17 Settlement Administrator in accordance with the instructions in the Class Notice. If the Class
18 Notice is re-mailed, the Response Deadline will be extended an additional fourteen (14) calendar
19 days. Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
20 objection.

21 12. A Final Approval Hearing shall be held before this Court on October 5, 2023 at
22 9:30 a.m. in Department 302 at the Civic Center Courthouse of the San Francisco County Superior
23 Court to determine all necessary matters concerning the Settlement, including: whether the
24 proposed settlement of the Action on the terms and conditions provided for in the Agreement is
25 fair, adequate and reasonable and should be finally approved by the Court; whether the Final
26 Approval Order and Judgment should be entered herein; whether the plan of allocation contained
27 in the Agreement should be approved as fair, adequate and reasonable to the Class Members; and
28

1 to finally approve attorneys' fees and costs, the service award, and the expenses of the
2 Administrator. The motion for final approval and the motion for attorneys' fees, costs and service
3 award shall be filed with the Court and served on all counsel no later than sixteen (16) court days
4 before the hearing and both motions shall be heard at the Final Approval Hearing.

5 13. Neither the Settlement nor any exhibit, document, or instrument delivered
6 thereunder shall be construed as a concession or admission by Defendant in any way that the
7 claims asserted have any merit or that this Action was properly brought as a class or representative
8 action, and shall not be used as evidence of, or used against Defendant as, an admission or
9 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
10 omission by Defendant or with respect to the truth of any allegation asserted by any person.
11 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
12 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
13 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
14 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
15 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
16 liability, fault, wrongdoing, omission, concession or damage.

17 14. In the event the Settlement does not become effective in accordance with the terms
18 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
19 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
20 and the Parties shall revert to their respective positions as of before entering into the Agreement,
21 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
22 including all available defenses and affirmative defenses, and arguments that no claim in the
23 Action could be certified as a class action and/or managed as a representative action. In such an
24 event, the Court's orders regarding the Settlement, including this Order, shall not be used or
25 referred to in litigation or otherwise for any purpose.

26 15. The Court reserves the right to adjourn or continue the date of the Final Approval
27 Hearing and all dates provided for in the Agreement without further notice to Class Members and
28

1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

6

7 Dated: _____

8

HON. RICHARD B. ULMER
JUDGE, SUPERIOR COURT OF CALIFORNIA

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PRELIMINARY APPROVAL ORDER