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Clerk of the Superior Court

JAN 19 2024

By: V. Secaur

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Superior Court of California,
County of San Diego

12/19/2023 at 02:44:06 PM

Clerk of the Superior Court
By Nora Lopez, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JULIANA BERGARA, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

BREAD & CIE, INC., a California
corporation; BREAD & CIE WHOLESALE,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2022-00001960-CU-OE-CTL

Assigned for All Purposes to:
Honorable Marcela McLaughlin
Department C-72

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 19, 2024

Hearing Time: 1:30 p.m.

Hearing Place: Department C-72

Complaint Filed: January 18, 2022

FAC Filed: March 21, 2022

SAC Filed: December 16, 2022

Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Juliana Bergara's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Class Action and PAGA Representative Action Settlement
4 and Release ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS AND**
5 **ORDERS:**

6 Plaintiff and Defendants Bread & Cie, Inc. and Bread & Cie Wholesale, LLC
7 ("Defendants") entered the Settlement Agreement on or about January 18, 2023 to settle this
8 lawsuit.

9 The Court entered an order dated August 4, 2023 preliminarily approving the settlement
10 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
11 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
12 providing Class Members with an opportunity to object to the Settlement or exclude themselves
13 from the Class, and scheduling a Final Approval Hearing.

14 The Court held a Final Approval Hearing on January 19, 2024 to determine whether to
15 give final approval to the Settlement of this lawsuit.

16 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
17 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
18 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
19 in the Settlement Agreement.

20 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
21 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
22 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
23 including jurisdiction to approve the Settlement and grants final certification of the Class.

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1 3. Final Class Certification. The Court finds the Class satisfies all applicable
2 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
3 process. The Court certifies the Class consisting of all current and former non-exempt employees
4 of Defendants in the State of California who worked for Defendants at any time from January 18,
5 2018 to December 31, 2022, inclusive (“Class,” “Class Members,” and “Class Period”). There
6 are 1,017 Class Members who did not timely exclude themselves from the Settlement
7 (“Participating Class Members”).¹

8 4. Adequacy of Representation. Class Counsel fully and adequately represented the
9 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
10 Code of Civil Procedure section 382.

11 5. Class Notice. The Court finds the Class Notice and its distribution to Class
12 Members were implemented pursuant to the Settlement and this Court’s Preliminary Approval
13 Order. The Court also finds the Class Notice:

- 14 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
15 pendency of this lawsuit; (ii) material terms and provisions of the
16 Settlement Agreement and their rights; (iii) their right to object to any
17 aspect of the Settlement Agreement; (iv) their right to exclude themselves
18 from the Settlement Agreement; (v) their right to receive settlement
19 payments; (vi) their right to appear at the Final Approval Hearing; and
20 (vii) binding effect of the orders and judgment in this lawsuit on all
21 Participating Class Members;
- 22 b. constitutes notice that fully satisfied the requirements of Code of Civil
23 Procedure section 382, California Rule of Court 3.769, and due process;
- 24 c. constitutes the best practicable notice to Class Members under the
25 circumstances of this lawsuit; and

26
27 ¹ The Settlement Administrator mailed out Class Notices to 1,033 Class Members and
28 received two (2) requests for exclusion. Moreover, fourteen (14) individuals on the Class List
who had zero (0) workweeks did not submit disputes by the Exclusion Deadline. Thus, these
individuals will be removed from the participating class list and will not be issued settlement

d. constitutes notice reasonable, adequate, and sufficient to Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered into good faith and are the product of arm's-length negotiations by experienced counsel who have done a meaningful investigation of the claims. The Settlement Agreement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Settlement Agreement and this Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved Employees, and their spouses, heirs, registered domestic partners, executors, administrators, successors, and assigns. In addition, those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in this lawsuit and are encompassed by the Class Released Claims and Private Attorneys General Act of 2004 ("PAGA") Released Claims. The Settlement Agreement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted timely requests for exclusion.

8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

9. Release by Participating Class Members. In exchange for the consideration under the Agreement and upon Defendants' delivery of the Gross Settlement Amount and employer-side payroll taxes on wages paid to Class Members to the Settlement Administrator, all Participating Class Members, on behalf of themselves and their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will and do forever release, waive, acquit, and discharge the Released Parties from the Class Released Claims and PAGA Released Claims, as defined in Section 1 of the Agreement.

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checks. As a result, there are 1,017 Participating Class Members.

1 a. Release by Class Representative. In exchange for the Class
2 Representative Incentive Payment, Plaintiff releases, on behalf of herself
3 and her heirs, representatives, attorneys, and assigns, all federal and state
4 statutory claims, and federal and state common law claims that Plaintiff
5 may have had, or presently has, against any of the Released Parties.
6 Plaintiff also expressly waives the protections and any and all benefits of
7 Civil Code section 1542.

8 b. Released Parties. The Released Parties include Defendants and their
9 present and former officers, directors, members, managers, shareholders,
10 agents, parents, subsidiaries, affiliates, insurers, operators, partners, joint
11 ventures, franchisees, franchisors, consultants, attorneys, successors, or
12 assignees.

13 10. Class Representative Incentive Payment. The Court finds the Class
14 Representative Incentive Payment of \$7,500, to be paid by Defendants to Plaintiff, out of the
15 Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Incentive
16 Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

17 a. The rationale for making enhancement payments is class representatives
18 should be compensated for the expense and risk they incurred in
19 conferring a benefit on the Class. Criteria courts consider include: (1) risk
20 to the class representatives in commencing suit; (2) notoriety and personal
21 difficulties; (3) amount of time and effort spent by the class
22 representatives; (4) duration of the litigation; and (5) personal benefit (or
23 lack thereof) enjoyed by class representatives.

24 b. The Court reviewed Plaintiff's declaration outlining her involvement.
25 Given the risks inherent in the services as the class representative, duration
26 of the case and time involved, and benefits created for the Class, the Court
27 approves the payment of the Class Representative Incentive Payment of
28 \$7,500 to Plaintiff.

1 11. Attorneys' Fees and Class Counsel's Litigation Costs. The Court finds the
2 Attorneys' Fees of \$133,333.33, to be paid by Defendants to Class Counsel out of the Gross
3 Settlement Amount, to be reasonable and appropriate. In addition, the Court finds the Class
4 Counsel's Litigation Costs as reimbursement for actual litigation costs incurred of \$3,137.54, to
5 be paid by Defendants to Class Counsel out of the Gross Settlement Amount, to be reasonable
6 and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth
7 in the Settlement Agreement. Defendants shall not be required to pay for any other attorneys'
8 fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel
9 representing Plaintiff or Class Members. Defendants shall also not be required to pay for any
10 other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class
11 Members in connection with or related in any manner to this lawsuit, Settlement Agreement,
12 settlement administration, Class Released Claims, and PAGA Released Claims.

13 a. The Court has an independent right and responsibility to review the
14 Attorneys' Fees and only award so much as it determines reasonable. (See
15 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118
16 Cal.App.4th 123, 127-28.) The Attorneys' Fees of \$133,333.33 is one-
17 third (1/3) of the common fund created for the benefit of the Class and is
18 supported by use of the percentage-fee method. (See *Laffitte v. Robert*
19 *Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results
20 achieved, financial risk undertaken, difficult nature of this litigation, skills
21 required, percentage fees award in previous and other cases, and
22 contingent fees charged in the marketplace, the Court finds the Attorneys'
23 Fees is consistent with the marketplace, is reasonable, and is approved.

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1 b. The Court reviewed the declaration of Douglas Han regarding the costs
2 expended in prosecuting this case. Under the terms of the Settlement,
3 Class Counsel may seek reimbursement of up to \$10,000 in litigation
4 costs. The Court finds Class Counsel expended \$3,137.54 in litigation
5 costs, and such costs were reasonable. The Court approves the payment of
6 the Class Counsel's Litigation Costs of \$3,137.54 from the common fund
7 for the reimbursement of Class Counsel's litigation costs.

8 12. Settlement Administration Costs. The Court finds Settlement Administration
9 Costs of \$13,500, to be paid by Defendants to the Settlement Administrator out of the Gross
10 Settlement Amount, to be reasonable and appropriate. The Settlement Administration Costs are
11 to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

12 a. The Court reviewed the declaration of William Argueta from CPT Group,
13 Inc., the Settlement Administrator. The Court finds notice was provided to
14 the Class pursuant to the Preliminary Approval Order, constitutes the best
15 practicable, and satisfied due process. Thus, the Court approves the
16 payment of the Settlement Administration Costs of \$13,500 for the
17 Settlement Administrator's services in administering the Settlement.

18 13. PAGA Payment. The Court finds the PAGA Payment of \$10,000, seventy-five
19 percent (75%) of which (\$7,500) will be paid to the LWDA out of the Gross Settlement Amount
20 and twenty-five percent (25%) of which (\$2,500) will be allocated to the Net Settlement Amount
21 to be distributed to Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate.
22 PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

23 14. Funding the Settlement. Defendants will deposit the total amount of the Gross
24 Settlement Amount with the Settlement Administrator within thirty (30) calendar days of the
25 Effective Date. This date shall be referred to as the "Funding Date." Ten (10) business days after
26 the Funding Date will be known as the "Payment Date." On the Payment Date, the Settlement
27 Administrator will prepare and mail the payments identified in the Agreement.

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1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
3 Settlement was the product of arm's-length negotiations following extensive litigation,
4 discovery, and exchange of documentation.

5 a. The fairness of the Settlement is demonstrated by there being no
6 objections to and only two (2) requests for exclusion from the Settlement.

7 16. Uncashed Checks. Participating Class Members and Aggrieved Employees must
8 cash or deposit their settlement checks within one hundred eighty (180) days after the checks are
9 mailed by the Settlement Administrator to them. Uncashed settlement checks will be canceled
10 and transmitted to the State of California Unclaimed Property Fund.

11 17. Modification of Settlement Agreement. The Participating Class Members are
12 hereby authorized to agree to and adopt amendments to or modifications of the Settlement
13 Agreement by writing and executed by the Parties and approved by the Court. Such amendments
14 or modifications shall be consistent with this Order and Judgment and cannot limit the rights of
15 Participating Class Members under the Settlement.

16 18. Final Accounting and Compliance. The Court sets a compliance hearing for
17 September 27, 2024 in Department C-72. Within five (5) court days before this hearing, Plaintiff
18 shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the
19 compliance status report shall specify the total amount paid to Participating Class Members and
20 the residual of the unclaimed settlement funds that will be paid to the entity identified as the
21 recipient of such funds in the Settlement Agreement.

22 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
23 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
24 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
25 and for any other necessary purpose, including, without limitation:

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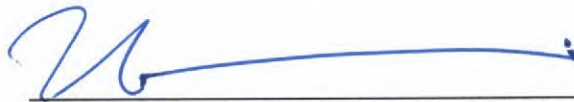
- 1 a. enforcing the terms and provisions of the Settlement and resolving any
2 disputes, claims, or causes of action in this lawsuit that, in whole or in
3 part, are related to or arise out of the Settlement or this Order and
4 Judgment;
5 b. entering such additional orders as may be necessary or appropriate to
6 protect or effectuate this Order and Judgment approving the Settlement,
7 and permanently enjoining Plaintiff from initiating or pursuing related
8 proceedings, or to ensure the fair and orderly administration of the
9 Settlement; and
10 c. entering any other necessary or appropriate orders to protect and effectuate
11 this Court's retention of continuing jurisdiction.

12 The Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Class
13 Counsel's Litigation Costs, and Class Representative Incentive Payment is GRANTED. The
14 Settlement Administrator is directed to carry out the terms of the Agreement forthwith.

15 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
16 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
17 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
18 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
19 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
20 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
21 THE JUDGMENT THEREON.

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23 **IT IS SO ORDERED.**

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25 DATED: 11/9/2024



HONORABLE MARCELA MCLAUGHLIN
SUPERIOR COURT JUDGE

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On January 30, 2024, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case:	Bergara v. Bread & Cie, Inc. et. al
LWDA/Court Case No.:	LWDA Case No.: CM- 845745-21
	Court Case No.: 37-2022-00001960-CU-OE-CTL
	San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 30, 2024, at Pasadena, California.

Betty Marie Loub

Bitty Minnis-Lemley