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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

NANCY ANNE TORRES, *et al.*,

Plaintiffs,

v.

AMY'S KITCHEN, INC..

Defendants.

Case No.: SCV-270827

[Hon. Oscar A. Pardo, Dept. 19]

~~[PROPOSED]~~ **FINAL ORDER AND
JUDGMENT**

Action Filed: April 8, 2022
Trial Date: None Set

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Attorneys for Plaintiff Breisy Ruiz

1 **~~PROPOSED~~ FINAL ORDER AND JUDGMENT**

2 The Court has before it the Parties' Stipulation for Approval of PAGA Settlement,¹ and
3 determining that the Settlement provides genuine and meaningful relief that benefits the public, is
4 fair, adequate, reasonable, and otherwise being fully informed and good cause appearing therefor,
5 it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

6 1. Unless otherwise provided herein, all capitalized terms used herein shall have the
7 same meaning as defined in the Settlement Agreement and Release ("Settlement Agreement").
8 The Court has jurisdiction over the subject matter of this lawsuit and all matters relating thereto,
9 and over all parties to the action.

10 2. The Court finds that the Settlement has been reached as a result of serious and non-
11 collusive, arm's-length negotiations. The Court has considered the nature of the claims, the
12 procedural history of this case, the amounts to be paid under the Settlement, the involvement of an
13 experienced private mediator to facilitate the Settlement, the risks of continued litigation that
14 Plaintiffs would face, the civil penalties recoverable if Plaintiffs were to prevail at trial on their
15 theories of liability under their PAGA claim, the allocation of settlement proceeds among the
16 Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties'
17 respective positions rather than the result of a finding of liability at trial.

18 3. The Court hereby finds the Settlement involves the resolution of a bona fide
19 dispute, was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds
20 that the Settlement provides genuine and meaningful relief that benefits the public consistent with
21 the purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699, *et seq.*

22 4. The Court therefore approves the Settlement as set forth in the Settlement
23 Agreement and directs the Parties to effectuate the Settlement according to the terms set forth in
24 the Settlement Agreement.

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26 _____
27 ¹ The Court has also reviewed and considered the records and files of this case, as well as all
28 documents submitted in connection with the Parties' Stipulation for Approval of PAGA
Settlement, including the operative First Amended Complaint, and all declarations.

1 5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement
2 are admissions by Defendant, or any of the other Released Parties, of liability on any of the
3 allegations alleged in the Action, nor is this Order a finding of the validity of any claims in the
4 Action, or of any wrong doing by the Defendant, or any of the other Released Parties.

5 6. The Court finds that Plaintiffs' Counsel has adequately represented the Plaintiffs,
6 the Aggrieved Employees, and the LWDA throughout the litigation and for purposes of entering
7 into and implementing the Settlement.

8 7. The Court finds that the PAGA Gross Settlement Amount ("GSA") of \$575,000.00
9 to be distributed as set forth herein and in the Settlement Agreement, is in all respects fair,
10 reasonable, and adequate and is hereby approved. *See* California Labor Code § 2699(l)(2).

11 8. Pursuant to the terms of the Settlement, Administration Costs in the amount of
12 \$8,750.00, which are necessary and reasonable to administer the Settlement, are hereby granted
13 and shall be paid to Phoenix, the designated third-party Claims Administrator.

14 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount
15 of \$191,667 are reasonable under the common fund method. The GSA of \$575,000.00 represents a
16 true and common fund, as Defendant must pay the full GSA pursuant to the Settlement
17 Agreement, and no portion of the GSA will return to Defendant under any circumstances.
18 Attorneys who recover a common fund are entitled to a reasonable fee award from the fund. *See,*
19 *e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who recovers a
20 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
21 attorney's fee from the fund as a whole."); *In re Washington Public Power Supply Sys. Sec. Litig.*
22 (9th Cir. 1994) 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of the fund should
23 share the wealth with the lawyers whose skill and effort helped create it."); *Serrano v. Priest*
24 (1977) 20 Cal.3d 25, 34 ("[W]hen a number of persons are entitled in common to a specific fund,
25 and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or
26 preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
27 fund. [Citations.]").

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1 10. Moreover, one-third or more of the common fund is standard in settlements similar
2 to this one. *See, e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506
3 (approving fees of one-third of the common fund); *In re Consumer Privacy Cases* (2009) 175
4 Cal.App.4th 545, 558 n.13 (“Empirical studies show that, regardless whether the percentage
5 method or the lodestar method is used, fee awards in class actions average around one-third of the
6 recovery.”); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee
7 awards in class actions average around one-third of the recovery”). Courts also regularly approve
8 fee awards in excess of one-third of the fund. *See, e.g., Scott, et al. v. Kuehne+Nagel, Inc.*, Cal.
9 Sup. Ct. San Bernardino Cty. No. CIVDS1707477 (awarding 35% of the common fund); *Cubillas*
10 *v. Dav-El Los Angeles*, 2018 WL 3760657, at *3-4 (Cal. Sup. Ct.) (awarding 40% of the common
11 fund); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super.
12 Ct.) (awarding 40% of the common fund); *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A.
13 Super. Ct.) (awarding 40% of the common fund).

14 11. The Settlement Agreement provides that Plaintiffs’ counsel may seek
15 reimbursement costs in the amount of up to \$20,000.00. The Court further finds that Plaintiffs’
16 counsel’s actual litigation costs in the amount of \$19,478.24 are reasonable and were necessary to
17 prosecute the action. The remainder of \$521.76 shall return to the Net Settlement Amount.

18 12. Accordingly, and consistent with California Labor Code § 2699(g)(1), which
19 authorizes an award of attorneys’ fees and costs, the requested attorneys’ fees in the amount of
20 \$191,667 and litigation costs in the amount of \$19,478.24 (totaling \$211,145.24), are hereby
21 granted, and the fees and costs to each firm shall be paid to Plaintiffs’ counsel as follows:
22 \$42,245.25 to Guzman & Tokar LLP; \$66,405.10 to the Law Office of Scott E. Wheeler;
23 \$50,335.91 to the Wand Law Firm, P.C.; \$50,308.91 to Jose Garay, APLC (\$3,354.17 of which
24 shall be paid to Anna Saluksy, Esq.); and \$1,850.07 to Messrelian Law Inc.

25 13. Pursuant to the terms of the Settlement, a payment in the amount of \$7,000.00 each
26 shall be paid to Plaintiffs Nancy Torres and Glendi Rosales, and a service award in the amount of
27 \$2,000.00 shall be paid to Plaintiff Breisy Ruiz, in recognition of their efforts in prosecuting this
28 action for the benefit of the State of California and Aggrieved Employees. Comparable service

1 awards are routinely issued to named plaintiffs in analogous wage-and-hour class and/or PAGA
2 representative action settlements. *See, e.g., Covillo v. Specialtys Cafe*, 2014 WL 954516, at *8
3 (N.D. Cal. Mar. 6, 2014) (awarding \$8,000 each to two named plaintiffs, noting that “the incentive
4 awards are particularly appropriate in this wage and hour class action, where Plaintiffs undertook a
5 significant ‘reputational risk’ in bringing this action against their former employer.”); *Alikhan v.*
6 *Goodrich Corp.*, 2020 WL 4919382, at * (C.D. Cal. Jun. 25, 2020) (approving a \$10,000 service
7 award); *Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607, at *6 (C.D. Cal. Nov.
8 14, 2019) (approving PAGA only settlement and holding “[t]he service award of \$5000 is
9 reasonable compensation for the time and acceptance of adverse employment risk by Plaintiff.”);
10 *Garcia v. Macy’s West Stores, Inc.*, San Bernardino County Superior Court, Case No.
11 CIVDS1515007 (Sept. 13, 2017) (awarding the PAGA plaintiff a service award of \$10,000).

12 14. After deducting administration costs, attorneys’ fees and costs, and the service
13 awards from the GSA, the remainder of \$339,104.76, consistent with California Labor Code §
14 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
15 (25%) to Aggrieved Employees. Accordingly, \$254,328.57 shall be paid to the LWDA, and
16 \$84,776.19 shall be paid to Aggrieved Employees. The payments to the Aggrieved Employees
17 will be paid proportionally based on the number of pay periods that each individual employee
18 worked for Defendant during the Covered Period.

19 15. Upon the date that Defendant fully funds the GSA, Plaintiffs, as the representatives
20 for the State of California, and on behalf of Aggrieved Employees, will forever completely release
21 and discharge Defendant and the Released Parties from all claims set forth in Section 9 of the
22 Agreement, which includes all claims that were, or reasonably could have been, alleged, based on
23 the facts contained in the Consolidated Complaint and in the PAGA Letters, including, but not
24 limited to, any claim for: (1) the alleged failure to pay all wages, including claims for minimum,
25 overtime, and double-time wages; (2) the alleged failure to pay for all time worked, including but
26 not limited to allegations of improper rounding and time shaving, and allegations of not being paid
27 while working during meal breaks, attending meetings, donning and doffing, waiting in line at the
28 clocks, and submitting to Covid-19 temperature checks and screening; (3) the alleged failure to

1 pay for all hours worked at correct rates, including overtime or double time at the correct regular
2 rates; (4) the alleged failure to pay split shift pay; (5) the alleged failure to provide suitable
3 seating; (6) the alleged failure to reimburse employees for all business expenses, including, but not
4 limited to, the purchase of personal protective equipment; (7) the alleged failure to provide paid
5 sick leave, including Covid-19 supplemental paid sick leave, including the failure to pay such
6 leave at the regular rate, and the failure to properly report such paid leave accruals and payments
7 in wage statements, and related recordkeeping; (8) the alleged failure to provide compliant meal
8 periods, including claims for late, short, interrupted and/or missed meal periods and/or the failure
9 to pay premium wages, including premium wages at the correct regular rates, and the alleged
10 failure to keep proper records of meal periods; (9) the alleged failure to provide compliant rest
11 breaks, including claims for late, short, interrupted, missed, or otherwise improperly controlled or
12 constrained rest breaks and/or the failure to pay premium wages, including premium wages at the
13 correct regular rates and related recordkeeping violations; (10) the alleged failure to provide
14 accurate itemized wage statements, including the failure to report all wages and premium wages
15 earned and the correct rates, and the failure to report earned tips; (11) the alleged failure to provide
16 timely payment of final wages; (12) the alleged failure to provide timely payment of wages on
17 regular payroll dates to employees; (13) the alleged failure to procure compliant background
18 reports; (14) unlawful retaliation under section 1102.5(b); and (15) any other claims for relief
19 alleged in the Consolidated Complaint and the PAGA Letters. The Covered Claims shall also
20 include all claims under Labor Code sections 201, 202, 203, 204, 206, 210, 226(a), 226.3, 226.7,
21 248.1, 248.2, 248.6, 510, 512, 558, 558.1, 1024.5, 1102.5(b), 1174, 1174.5, 1194, 1197, 1197.1,
22 1198, 2800, 2802, and related sections of the applicable wage order, including, but not limited to,
23 Sections 3, 4, 7, 11, and 12 of the applicable wage order.

24 16. The terms of the Settlement Agreement, and this Order, are binding on the
25 Plaintiffs and Aggrieved Employees, and those terms shall have res judicata and other preclusive
26 effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of
27 Aggrieved Employees, to the extent those claims, lawsuits or other proceedings constitute
28 Released Claims as set forth in the Settlement Agreement.

1 17. Neither this Order nor the Settlement Agreement (nor any other document referred
2 to herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as,
3 an admission or concession by or against Defendant or the Released Parties of the validity of any
4 claim or actual or potential fault, wrongdoing, or liability. Neither this Order nor the Settlement
5 can be construed in any way as a Court finding of fact or legal ruling that Defendant violated the
6 law, and thus cannot be used to support subsequent violation penalty rates under the PAGA in a
7 future action. Entering into or carrying out the Settlement Agreement, and any negotiations or
8 proceedings related to it, shall not be considered as, or deemed evidence of, an admission or
9 concession as to Defendant's denials or defenses and shall not be offered or received in evidence
10 in any action or proceeding against any party hereto in any court, administrative agency or other
11 tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the
12 provisions of this Order and the Settlement Agreement; provided, however, that this Order and the
13 Settlement Agreement may be filed in any action against or by Defendant or the Released Parties
14 to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement,
15 judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue
16 preclusion or similar defense or counterclaim.

17 18. Judgment in this matter is entered in accordance with the terms of the Settlement
18 Agreement and Approval Order. This judgment is intended to be a final disposition of the above
19 captioned action in its entirety, and is intended to be immediately appealable.

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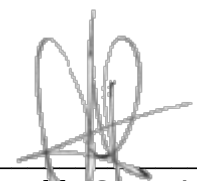
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19. The Court reserves exclusive and continuing jurisdiction over the lawsuit for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Order.

IT IS SO ORDERED.

8/15/2023
DATED: _____



Honorable Oscar A. Pardo
Judge of the Superior Court