

9/3/24

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Jacquelyne VanEmmerik (SBN 339338)
MOON LAW GROUP, P.C.
725 South Figueroa Street, 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
Email: kmoon@moonlawgroup.com
Email: afeghali@moonlawgroup.com
Email: jvanemmerik@moonlawgroup.com

Attorneys for Plaintiff, *Ana Vallejo*

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

SEP - 3 2024

BY *Jessica Garcez*
JESSICA GARCEZ, DEPUTY

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

ANA VALLEJO, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

ARYZTA, LLC, a limited liability company;
ARYZTA IV, LLC, a limited liability company;
ARYZTA IV, INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2202082

[Honorable Joseph T. Ortiz, Department S17]

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF ANA VALLEJO'S
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT**

[Filed with Plaintiff Ana Vallejo's Notice of
Motion and Motion for Final Approval.
Declaration of Kane Moon,
Declaration of Plaintiff Ana Vallejo, and
Declaration of Mary Butler]

FINAL APPROVAL HEARING

Date: September 3, 2024
Time: 1:30 p.m.
Dept: S17

Complaint Filed: January 27, 2022
Trial Date: Not Set

1 The Court issued an Order Granting Plaintiff Ana Vallejo's Motion for Preliminary Approval
2 of Class and Representative Action Settlement on April 3, 2024. Plaintiff Ana Vallejo ("Plaintiff")
3 now seeks an Order and Judgment Granting Final Approval of the same Joint Stipulation of Class
4 and Representative Action Settlement Agreement ("Settlement") between Plaintiff and Defendant
5 Aspire Bakeries LLC, formerly known as Aryzta LLC ("Defendant"), attached to the Declaration of
6 Kane Moon in Support of Plaintiff's Motion for Final Approval of Class and Representative Action
7 Settlement as **Exhibit 2**.

8 The Court, having considered Plaintiff's Notice of Motion and Motion for Final Approval of
9 Class and Representative Action Settlement Agreement ("Motion"), the supporting Declarations and
10 Exhibits therein, the records and files in this Action, and the absence of any written objections to the
11 Settlement, and good cause appearing, **HEREBY ORDERS, ADJUDGES, AND DECREES AS**
12 **FOLLOWS:**

13 The Court, for purposes of this Final Order and Judgment, refers to all defined terms as set
14 forth in the Settlement.

15 The Court has jurisdiction over all claims asserted in this Action, Plaintiff, all Participating
16 Class Members, all Aggrieved Employees, and Defendant.

17 The Settlement appears to have been made and entered into in good faith and is hereby
18 approved, subject to any limitations on the requested fees and payments as set forth below.

19 For purposes of effectuating the Settlement, **the following Class is hereby certified: all**
20 **persons employed by Defendant as hourly nonexempt employees who did not sign an**
21 **arbitration agreement with Defendant containing a class action waiver; who did not sign a**
22 **severance agreement releasing all claims; or who did not work at the Stockton facility, but**
23 **otherwise worked in California during the period from January 1, 2019 through April 3, 2024.**
24 *Settlement, ¶ 1.5, 1.13.*

25 No Class Members have objected to the terms of the Settlement, and no Class Members have
26 requested exclusion from the Settlement. *Declaration of Mary Butler ("Butler Decl."), ¶¶ 12, 13.*

27 Effective on the date of the Final Judgment, and the date Defendant fully funds the entire
28 Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual

1 Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel
2 will release claims against all Released Parties as follows (*Settlement*, ¶ 5):

3 a. **Released Parties.** "Released Parties" means Defendant and each of its past,
4 present and future agents, employees, servants, officers, directors, partners,
5 trustees, representatives, shareholders, stockholders, attorneys, parents,
6 subsidiaries, equity sponsors, related companies/corporations and/or
7 partnerships, divisions, assigns, predecessors, successors, insurers, consultants,
8 service providers, joint venturers, joint employers, co-employers, dual
9 employers, alleged joint employers, alleged co-employers, alleged dual
10 employers, affiliates, alter-egos, and affiliated organizations, and all of their
11 respective past, present and future employees, directors, officers, agents,
12 attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns.
13 *Settlement*, ¶ 1.40.

14 b. **Plaintiff's Release.** As a condition of receiving any portion of her Class
15 Representative Service Payment, Plaintiff fully and finally releases the
16 Released Parties from any and all claims, known and unknown, under federal,
17 state and or local law, statute, ordinance, regulation, common law, or other
18 source of law, including, but not limited to, all claims arising from or related to
19 her employment with Defendant and her compensation while an employee of
20 Defendant ("Plaintiff's Released Claims"). Plaintiff's Released Claims include,
21 but are not limited to, all claims arising from or related to the Action and related
22 Operative Complaint. Plaintiff's Released Claims include, but are not limited
23 to, all claims for: (i) unpaid wages, including failure to pay minimum wages,
24 straight time compensation, overtime compensation, double-time compensation,
25 rounded time, and interest; (ii) miscalculation of the regular rate of pay; missed
26 meal period and rest-period premiums, including failure to pay premiums at the
27 regular rate of compensation; (iii) reimbursement for all necessary business
28 expenses; (iv) payment for all hours worked, including off-the-clock work; (v)

1 failure to pay vested, unused vacation pay; (vi) failure to pay sick leave pay at
2 the regular rate of pay; (vii) deductions; (viii) failure to keep accurate records;
3 (ix) unfair business practices; (x) penalties, including, but not limited to, civil
4 penalties, statutory penalties, recordkeeping penalties, minimum-wage
5 penalties, wage statement penalties, and waiting-time penalties; and (xi)
6 attorneys' fees and costs. Plaintiff's Released Claims also include all claims
7 arising under the: (i) California Labor Code, including, but not limited to,
8 sections 90.5, 201, 202, 203, 204, 213, 218.5, 221, 223, 226, 226.3, 226.7,
9 227.3, 246, 432, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
10 1194.2, 1197, 1197.1, 1198, 1199, 1670.5, 2698 *et seq.*, 2699 *et seq.*, 2699.3,
11 2800, and 2802; (ii) Wage Orders of the California Industrial Welfare
12 Commission; (iii) California Private Attorneys General Act of 2004 ("PAGA");
13 (iv) California Business and Professions Code sections 17200, *et seq.*; (v)
14 California Civil Code, including, but not limited to, sections 3287, 3336, and
15 3294; (vi) California Code of Civil Procedure section 1021.5; (vii) California
16 common law of contract; (viii) FLSA, 29 U.S.C. sections 201, *et seq.*; (viii)
17 federal common law; and (ix) Employee Retirement Income Security Act, 29
18 U.S.C. sections 1001, *et seq.* ("ERISA"). Plaintiff's Released Claims also
19 include all claims for lost wages and benefits, emotional distress, retaliation,
20 punitive damages, and attorneys' fees and costs arising under federal, state, or
21 local laws for discrimination, harassment, retaliation, and wrongful termination,
22 such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title
23 VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Age
24 Discrimination in Employment Act, California Fair Employment and Housing
25 Act; and the law of contract and tort ("Plaintiff's Release"). Plaintiff's Release
26 excludes the release of claims not permitted by law. *Settlement*, ¶¶ 5.1, *et seq.*

27 c. **Release by Participating Class Members.** All Participating Class Members
28 fully and finally release the Released Parties from any and all claims alleged in

1 the Action, arising from facts and claims alleged in the Action, or that could
2 have been raised in the Action based on the facts and claims alleged in the
3 Operative Complaint. The Released Class Claims include all claims for: (i)
4 failure to pay minimum wages, straight time compensation, overtime
5 compensation, double-time compensation, and interest; (ii) the calculation and
6 payment of the regular rate of pay; (iii) missed meal period and rest-period
7 premiums, including failure to pay premiums at the regular rate of
8 compensation; (iv) the provision of wage statements; (v) the alleged failure to
9 pay vested, unused vacation pay; (vi) the alleged failure to pay sick leave pay at
10 the regular rate of pay; (vii) reimbursement for all necessary business expenses;
11 (viii) payment for all hours worked, including off-the-clock work; (ix)
12 deductions; (x) failure to keep accurate records; (xi) unfair business practices;
13 (xii) penalties, including, but not limited to, civil penalties, statutory penalties,
14 recordkeeping penalties, minimum-wage penalties, wage statement penalties,
15 and waiting-time penalties; (xiii) attorneys' fees and costs; (xiv) all derivative
16 claims; and (xv) all claims related to the Released Class Claims which are
17 asserted in the Action or which could have been asserted based on the factual
18 allegations pled in the Action arising under the California Labor Code,
19 including, but not limited to, sections 201, 202, 203, 246, 248.5, 2698 *et seq.*;
20 Wage Orders 4-2001, 5-2001, and 7-2001 of the California Industrial Welfare
21 Commission; California Private Attorneys General Act of 2004 ("PAGA"); and
22 California Business and Professions Code section 17200 (collectively,
23 "Participating Class Members' Release). The Participating Class Members'
24 Release excludes the release of claims not permitted by law. *Settlement*, ¶ 5.2.

25 d. **Release by Aggrieved Employees.** All Aggrieved Employees fully and finally
26 release the Released Parties from any and all claims for PAGA civil penalties
27 asserted in the Action, arising from the facts and claims alleged in the Action,
28 or that could have been raised in the Action based on the facts and claims

1 alleged in the Operative Complaint and/or in Plaintiff's PAGA Notices
2 ("Released PAGA Claims"). The Released PAGA Claims include all claims for
3 PAGA civil penalties premised upon California Labor Code sections 200, 201,
4 202, 203, 204, 208, 210, 218.5, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7,
5 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
6 1197.1, 1198, and 1199, *et seq.* and the California Industrial Commission Wage
7 Orders; and all other claims for civil penalties recoverable under the California
8 Private Attorneys General Act of 2004, based on the facts or claims alleged in
9 the Operative Complaint at any time during the PAGA Period (collectively,
10 "Aggrieved Employees' Release"). The Released PAGA Claims do not release
11 any Aggrieved Employees' claims for wages or statutory penalties, and the
12 Aggrieved Employees may not opt out of the Released PAGA Claims.
13 Settlement, ¶ 5.3.

- 14 e. **Funding of Gross Settlement Amount:** No later than fourteen (14) business
15 days after the Effective Date of the Settlement, Defendant shall fund the entire
16 Gross Settlement Amount and its share of payroll taxes by transmitting such
17 funds to the Administrator. *Settlement*, ¶ 4.2.
- 18 f. **Effective Date.** "Effective Date" means the date both of the following have
19 occurred: (a) the Court enters a Judgment on its Order Granting Final Approval
20 of the Settlement; and (b) the Judgment is final. The Judgment is final as of the
21 latest of the following occurrences: (a) if no Participating Class Member objects
22 to the Settlement, the day the Court enters the Judgment; (b) if one or more
23 Participating Class Members object(s) to the Settlement, the day after the
24 deadline for filing a notice of appeal from the Judgment; or (c) if a timely
25 appeal from the Judgment is filed, the day after the appellate court affirms the
26 Judgment and issues a remittitur. *Settlement*, ¶ 1.19.
- 27
28

1 The Gross Settlement Amount and methodology used to calculate and pay the Individual
2 Class Payments and Individual PAGA Payments are fair and reasonable. The Administrator is
3 authorized to pay the Individual Class Payments and Individual PAGA Payments to the Participating
4 Class Members and Aggrieved Employees in accordance with the terms of the Settlement.

5 Defendant shall pay a total of \$950,000.00 to resolve this Action. *Settlement*, ¶ 1.23.
6 Defendant will remit the Gross Settlement Amount and the amounts necessary to fully pay its share
7 of payroll taxes to the Administrator no later than fourteen (14) business days after the Effective
8 Date. *Settlement*, ¶ 4.2. No later than fourteen (14) calendar days after Defendant funds the entire
9 Gross Settlement Amount, the Administrator shall mail all payments from the Gross Settlement
10 Amount. *Settlement*, ¶ 4.3.

11 From the Gross Settlement Amount, PAGA Penalties in the amount of \$80,000.00 shall be
12 paid to the California Labor and Workforce Development Agency ("LWDA") and Aggrieved
13 Employees. The LWDA shall receive 75% of the PAGA Penalties, or \$60,000.00, and the Aggrieved
14 Employees shall receive 25% of the PAGA Penalties, or \$20,000.00, pursuant to the California
15 Private Attorneys General Act of 2004, Labor Code sections 2699, et seq. *Settlement*, ¶ 3.2.5.

16 From the Gross Settlement Amount, a Class Representative Service Payment in the amount
17 of \$7,500.00 shall be paid to Plaintiff Ana Vallejo for her service to the Class and general release of
18 claims. *Settlement*, ¶ 3.2.1. Ana Vallejo is hereby confirmed as Class Representative.

19 From the Gross Settlement Amount, an Administration Expenses Payment in the amount of
20 \$9,000.00 shall be paid to the designated Administrator, Simpluris, Inc. *Settlement*, ¶ 3.2.3; *Butler*
21 *Decl.*, ¶ 17.

22 From the Gross Settlement Amount, a Class Counsel Fees Payment of one-third of the Gross
23 Settlement Amount, or \$316,666.67, and a Class Counsel Litigation Expenses Payment of
24 \$23,880.91 shall be paid to Class Counsel for their reasonable fees and actual costs incurred in
25 furtherance of this Action. *Settlement*, ¶ 3.2.2; *Moon Decl.*, Exh. 5 (*less the Admin fee*). The Parties
26 shall otherwise bear their own respective attorneys' fees and costs, except as provided for in the
27 Settlement and approved by the Court. The fees and costs shall be distributed to Class Counsel as set
28

1 forth in the Settlement. The Court finds that the fees are reasonable in light of the benefit provided to
2 the Class. Moon Law Group, P.C. is hereby confirmed as Class Counsel.

3 The Notice provided to the Class conformed with the requirements of California Rules of
4 Court rules 3.766 and 3.769, and constituted the best notice practicable under the circumstances,
5 providing individual notice to all Class Members who could be identified through reasonable effort
6 and due and adequate notice of the proceedings and matters set forth therein to the Class Members.
7 *Butler Decl.*, ¶¶ 6-10. The Notice fully satisfies the requirements of Due Process.

8 The Parties are ordered to have notice of this Final Order and Judgment provided to all
9 Participating Class Members and Aggrieved Employees, in accordance with California Rules of
10 Court section 3.771(b), and to have the Individual Class Payments and Individual PAGA Payments
11 issued via First Class U.S. Mail to their last known addresses and to the LWDA, pursuant to Labor
12 Code section 2699(1). *Settlement*, ¶ 4.3.1.

13 Following entry of Judgment, the Court shall retain jurisdiction over the Parties, Action, and
14 Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing
15 settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted
16 by law. *Settlement*, ¶ 9.3.

17 This Judgment is intended to be a final disposition of the Action in its entirety and is intended
18 to be immediately appealable.

19 Plaintiff's Motion is hereby granted, and the Court directs that Judgment shall be entered in
20 accordance with the terms of this Order.

21 The Court sets a ~~Non-Appealance~~ Hearing (Case Review) Re: Distribution on
22 June 3, 2025 at 8:30am in Department S17. Class Counsel is ordered to file a final
23 report and declaration regarding distribution no later than _____.

24 **IT IS SO ORDERED.**

25 DATE: Sept. 3, 2024

26 
27 Honorable Joseph T. Ortiz, Judge of the Superior Court of
28 California for the County of San Bernardino