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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN MATEO

15 ADRIAN OCHOA-ANDRADE, an
16 individual, on behalf of himself, and on behalf
17 of all persons similarly situated,

18 Plaintiff,

19 vs.

20 SEE'S CANDIES, INC; a California
21 Corporation; and DOES 1 through 50,
22 inclusive,

23 Defendants.

CASE NO.: **22-CIV-02481**

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

Hearing Date: November 28, 2023

Hearing Time: 2:00 p.m.

Judge: Marie S. Weiner

Dept.: 2

Action Filed: June 16, 2022

Trial Date: Not Set

1 The motions of Plaintiff Adrian Ochoa-Andrade (“Plaintiff”) for an order finally approving
2 the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant See’s Candies,
3 Inc. (“Defendant”) and for an award of attorneys’ fees and costs, service payment, and the fees of
4 the Administrator duly came on for hearing on November 28, 2023 before the Honorable Marie S.
5 Weiner.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Mateo, and over all Parties to this litigation,
13 including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Nine Hundred Thousand
16 Dollars (\$900,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, the significant risks relating to certification, liability, and damages issues, and the
21 assistance of an experienced mediator in the settlement process, among other factors, support the
22 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

- 24 5. On August 14, 2023, the Court granted preliminary approval of the Settlement. At
25 this same time, the Court approved conditional certification of the Class for settlement purposes
26 only.

27 **Notice to the Class**

1 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
2 by first class mail to members of the Class at their last known addresses on or about August 31,
3 2023. Mailing of the Class Notice to their last known addresses was the best notice option under
4 the circumstances and was reasonably calculated to communicate actual notice of the litigation
5 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
6 accurately informed the Class Members of all material elements of the proposed Settlement and of
7 their opportunity to object to or comment thereon or to seek exclusion from the Settlement;
8 constituted valid, due, and sufficient notice to all Class Members; and complied fully with the
9 laws of the State of California, the United States Constitution, due process and other applicable
10 law. The Class Notice fairly and adequately described the Settlement and provided Class
11 Members adequate instructions and a variety of means to obtain additional information.

12 7. The Response Deadline for opting out of the Class or submitting written objections
13 to the Settlement was October 30, 2023, which for re-mailings was extended by fourteen (14)
14 days. There was an adequate interval between mailing of the Class Notice and the Response
15 Deadline to permit Class Members to choose what to do and act on their decision. A full
16 opportunity has been afforded to the Participating Class Members to participate in this hearing,
17 and all Participating Class Members and other persons wishing to be heard have been heard. Class
18 Members also have had a full and fair opportunity to exclude themselves from the proposed
19 Settlement and Class. Accordingly, the Court determines that all Class Members who did not
20 timely and properly submit a request for exclusion are bound by the Settlement and this Final
21 Approval Order and Judgment.

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.*
24 (1996) 48 Cal.App.4th 1794, 1801; *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 .)

25 a. The settlement was reached through arm's-length bargaining between the
26 parties during an all-day mediation before David Rotman, a respected and experienced mediator of
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1 wage and hour class actions. There has been no collusion between the parties in reaching the
2 proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. No requests for exclusion were received.

9 e. The participation rate was high. 1,431 Participating Class Members will be
10 mailed a settlement payment, representing 100% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$300,000 for attorneys' fees, representing one-third of the Gross
20 Settlement Amount, and \$20,000 for litigation costs and expenses, is reasonable in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
23 and billing statements.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
27 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
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1 the risks and burdens undertaken by the Plaintiff in the litigation, for his time and effort in
2 bringing and prosecuting this matter on behalf of the Class, and for his execution of a general
3 release.

4 **Administration Expenses Payment**

5 13. The Administrator shall calculate and administer the payment to be made to the
6 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
7 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Penalties,
8 issue any required tax reporting forms, calculate withholdings and perform the other remaining
9 duties set forth in the Agreement. The Administrator has documented \$20,446.64 in fees and
10 expenses, and this amount is reasonable in light of the work performed by the Administrator.

11 **PAGA Penalties**

12 14. The Agreement provides for PAGA Penalties out of the Gross Settlement Amount
13 of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development Agency
14 ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
15 Agreement pursuant to the PAGA and \$5,000 to be distributed to the Aggrieved Employees,
16 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
17 (\$5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
18 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
19 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
20 Individual PAGA Payment. "PAGA Pay Period" means any Pay Period (Sunday-Saturday) during
21 which an Aggrieved Employee worked for Defendant for at least one day during the PAGA
22 Period, which is June 16, 2021, through July 26, 2023. Pursuant to Labor Code section 2699,
23 subdivision (l)(2), the LWDA was provided notice of the Agreement and these settlement terms
24 and has not indicated any objection thereto. The Court finds the PAGA Penalties to be reasonable.

25 **II.**

26 **ORDERS**

1 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED as
2 follows:

3 15. The certification of the Class for the purposes of settlement is confirmed. The
4 Class is defined as follows:

5 All individuals who were employed by Defendant See's Candies, Inc. in California
6 and classified as a non-exempt, non-retail manufacturing employee at any time
7 from November 22, 2020, through July 26, 2023; plus the claims of Adrian Ochoa-
Andrade and Nehusita Osamu for the period June 16, 2018, through July 26, 2023.

8 16. All persons who meet the foregoing definition are members of the Class, except for
9 those individuals who filed a valid request for exclusion ("opt out") from the Class. There were
10 no individuals who requested exclusion.

11 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
12 best interest of the Class.

13 18. Class Counsel are awarded attorneys' fees in the amount of \$300,000 and costs in
14 the amount of \$20,000. Class Counsel shall not seek or obtain any other compensation or
15 reimbursement from Defendant, Plaintiff or members of the Class.

16 19. The payment of the Class Representative Service Payment in the amount of
17 \$10,000 to the Plaintiff is approved.

18 20. The payment of \$20,446.64 to the Administrator for its fees and expenses is
19 approved.

20 21. The PAGA Penalties in the amount of \$20,000 are approved and shall be allocated
21 in accordance with the Agreement.

22 22. The Agreement and this Settlement are not an admission by Defendant, nor is this
23 Final Approval Order and Judgment a finding of the validity of any claims in the Action or of any
24 wrongdoing by Defendant, or that this Action is appropriate for class treatment (other than for
25 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
26 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
27 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
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1 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
2 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
3 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
4 these restrictions, Defendant may file this Final Approval Order and Judgment, the Agreement, or
5 any other papers and records on file in the Action in this Action or in any other proceeding as
6 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
7 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
8 Released PAGA Claims.

9 23. Notice of entry of this Final Approval Order and Judgment shall be given to all
10 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
11 and Judgment shall be posted on the Administrator's website as set forth in the Class Notice. It
12 shall not be necessary to send notice of entry of this Final Approval Order and Judgment to
13 individual Class Members.

14 24. If the Agreement does not become final and effective in accordance with the terms
15 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
16 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
17 revert to their respective positions as of before entering into the Agreement and expressly reserve
18 their respective rights regarding the prosecution and defense of this Action, including all available
19 defenses and affirmative defenses, and arguments that any claim in the Action could not be
20 certified as a class action and/or managed as a representative action.

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22 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

23 25. Except as set forth in the Agreement and this Final Approval Order and Judgment,
24 Plaintiff, and all members of the Class, shall take nothing in the Action.

25 26. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
26 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
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1 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
2 arising from or in connection with the distribution of settlement benefits.

3 27. The Parties are authorized to agree to and to adopt such amendments, modifications
4 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
5 Final Approval Order and Judgment and as approved by the Court.

6 28. Each party shall bear its own attorneys' fees and costs, except as otherwise
7 provided in the Agreement and in this Final Approval Order and Judgment.

8 29. Effective on the date when Defendant fully funds the entire Gross Settlement
9 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
10 Payments, all Participating Class Members, on behalf of themselves and their respective former
11 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
12 release Released Parties from the Released Class Claims. The "Released Class Claims" are all
13 claims that were alleged, or reasonably could have been alleged, based facts stated in the
14 Operative Complaint, known or unknown, for any type of relief against the Released Parties that
15 occurred during the Class Period, including claims for: (i) meal and rest break violations or
16 premium payments in lieu thereof; (ii) failure to pay earned wages for all hours worked, including
17 minimum wages or overtime wages; (iii) failure to pay wages timely during employment and upon
18 termination; (iv) failure to pay sick time; (v) failure to reimburse employees for required expenses;
19 (vi) failure to furnish accurate wage statements; (vi) unfair business practices relating to or arising
20 out of any of the foregoing; and (viii) to the extent not covered above, any and all claims
21 reasonably arising out of the Operative Complaint or Plaintiff's PAGA Notice. Except as
22 expressly set forth in this Agreement, Participating Class Members do not release any other
23 claims, including claims for vested benefits, wrongful termination, violation of the Fair
24 Employment and Housing Act, unemployment insurance, disability, social security, workers'
25 compensation, and/or claims based on facts occurring outside the Class Period.

26 30. Effective on the date when Defendant fully funds the entire Gross Settlement
27 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
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1 Payments, Aggrieved Employees and the LWDA are deemed to release the Released Parties from
2 the Released PAGA Claims on behalf of themselves, their respective former and present
3 representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of
4 California. “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or
5 reasonably could have been alleged, based on the facts stated in the Operative Complaint and the
6 PAGA Notice that occurred during the PAGA Period. The Released PAGA Claims do not include
7 claims for vested benefits, wrongful termination, discrimination, unemployment insurance,
8 disability, social security, worker’s compensation, and/or claims outside of the PAGA Period. The
9 release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless
10 of whether an Aggrieved Employee submitted a request for an exclusion from the Class.

11 31. Plaintiff and his former and present spouses, representatives, agents, attorneys,
12 heirs, administrators, successors, and assigns generally releases and discharges Released Parties
13 from all claims, transactions, or occurrences between them that occurred or arose anytime from the
14 beginning of time to the date Plaintiff executed the Agreement (“Plaintiff’s Individual Released
15 Claims”). This release of Plaintiff’s Individual Released Claims releases the Released Parties
16 from any claim that Plaintiff could maintain in any action against any Released Party and includes,
17 but is not limited to, (a) all claims that were, or reasonably could have been, alleged, based on the
18 facts contained, in the Operative Complaint and Plaintiff’s PAGA Notice and (b) all PAGA claims
19 that were, or reasonably could have been, alleged based on facts contained in the Operative
20 Complaint and Plaintiff’s PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not
21 extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
22 unemployment benefits, disability benefits, social security benefits, or workers’ compensation
23 benefits that arose at any time, or based on occurrences after the date Plaintiff signed the
24 Agreement. For the avoidance of doubt, Plaintiff is subject to the class and PAGA releases for the
25 duration of the Class Period and PAGA Period respectively. Plaintiff acknowledges that Plaintiff
26 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now
27 knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain
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1 effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery
2 of them. The Parties declared and represented that they intended the Agreement to be complete
3 and not subject to any claim of mistake, and that the releases herein express full and complete
4 releases, and that they intended that the releases herein shall be final and complete.

5 32. A compliance hearing is set for _____, 2024 at _____,
6 with a compliance report to be submitted fourteen (14) days before this hearing.

7 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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9 Dated: _____

10 _____
11 HON. MARIE S. WEINER
12 JUDGE, SUPERIOR COURT OF CALIFORNIA
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