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~~September 25, 2024~~

F I L E D
San Diego Superior Court

OCT 18 2024

Clerk of the Superior Court
By: K. Mulligan, Deputy

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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF SAN DIEGO

22 ROBERT SHANNON, BRENELL
23 WHITFIELD, and ADRIANA VALDEZ,
24 individually and on behalf of all others
25 similarly situated,

26 Plaintiffs,

27 vs.

28 BURTON RESTAURANTS, LLC; HIGH
PERFORMANCE HOSPITALITY LLC; and
DOES 1-20, inclusiv,

Defendants.

CASE No.: 37-2022-00025778-CU-OE-CTL

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

Hearing Date: October 18, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Blaine Bowman
Dept: 74

Date Filed: June 30, 2022
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiffs Robert Shannon, Brenell Whitfield, and Adriana
2 Valdez ("Plaintiffs") for an order finally approving the Class and Collective Action Settlement
3 Agreement and Release ("Agreement") with Defendants Burton Restaurants, LLC and High
4 Performance Hospitality LLC ("Defendants"), attorneys' fees and costs, service payments, and the
5 expenses of the Administrator duly came on for hearing on October 18, 2024 before the Honorable
6 Blaine Bowman.

7 **I.**

8 **FINDINGS**

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

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the Superior Court for the State of California, in and for the County of San Diego, and over all
14 Parties to this litigation, including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiffs and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of Seven Hundred Fifty
17 Thousand Dollars (\$750,000) and the terms set forth in the Agreement are fair, reasonable, and
18 adequate.
- 19 4. The Court further finds that the Settlement was the result of arm's length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
22 Settlement, and the assistance of an experienced mediator in the settlement process, among other
23 factors, support the Court's conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On April 18, 2024, the Court granted preliminary approval of the Settlement. At
26 this same time, the Court approved conditional certification of the Class for settlement purposes
27 only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Court-approved Class
3 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
4 about May 16, 2024. Mailing of the Class Notice to their last-known addresses was the best notice
5 practicable under the circumstances and was reasonably calculated to communicate actual notice
6 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
7 Members fully and accurately informed the Class Members of all material elements of the
8 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
9 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
10 fully with the laws of the State of California, the United States Constitution, due process and other
11 applicable law. The Class Notice fairly and adequately described the Settlement and provided
12 Class Members adequate instructions and a variety of means to obtain additional information.

13 7. The deadline for opting out or submitting written objections and/or claim forms to
14 the Settlement was July 15, 2024. There was an adequate interval between notice and the deadline
15 to permit Class Members to choose what to do and to act on their decision. A full and fair
16 opportunity has been afforded to the Class Members to participate in this hearing, and all Class
17 Members and other persons wishing to be heard have had a full and fair opportunity to be heard.
18 Class 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 the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 Parties during an all-day mediation before Hon Carl West (Ret.), a respected jurist and
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1 experienced mediator of wage and hour class actions. There has been no collusion between the
2 Parties in reaching the Settlement.

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

5 c. Counsel for all Parties are experienced in similar employment class action
6 and PAGA litigation. Class 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. 1,377 Participating Class Members will be
10 mailed a settlement payment, representing 100% of the overall Class. There are also one hundred
11 seventy (170) Collective Members who returned a Claim Form.

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

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

19 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

20 11. An award of \$250,000 for attorneys' fees, representing one-third of the Gross
21 Settlement Amount, and \$22,632.75 for litigation costs and expenses, is reasonable, in light of the
22 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
23 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
24 and billing statement.

25 **Class Representative Service Awards**

26 12. The Agreement provides for Service Awards of not more than \$10,000 to each of
27 the Plaintiffs, subject to the Court's approval. The Court finds that Service Awards in the amount
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1 of \$10,000 each to the Plaintiffs are reasonable in light of the risks and burdens undertaken by the
2 Plaintiffs in this litigation and for their time and effort in bringing and prosecuting this matter on
3 behalf of the Class as well as for their Civil Code section 1542 release.

4 **Administration Costs**

5 13. The Administrator shall calculate and administer the payment to be made to the
6 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
7 Service Awards to the Plaintiffs, issue all required tax reporting forms, calculate withholdings and
8 perform the other remaining duties set forth in the Agreement. The Administrator has documented
9 \$18,750 in fees and expenses, and this amount is reasonable in light of the work performed by the
10 Administrator.

11 **PAGA Settlement Amount**

12 14. The Agreement provides for a PAGA Settlement Amount of \$50,000 to be paid
13 out of the Gross Settlement Amount, which shall be allocated pursuant to the PAGA, 75% of the
14 PAGA Settlement Amount (\$37,500) shall be paid to the California Labor and Workforce
15 Development Agency, and 25% of the PAGA Settlement Amount (\$12,500) shall be held for
16 distribution of Settlement Awards to Aggrieved Employees. The Net PAGA Amount shall be
17 distributed as follows: Each Aggrieved Employee shall be eligible to receive a *pro rata* portion of
18 the Net PAGA Amount based on his or her PAGA Pay Periods during which he or she was
19 employed by Defendants in non-exempt positions in California during the PAGA Period. The
20 resulting Net PAGA Amount per Aggrieved Employee, if any, will be added to that Aggrieved
21 Employee's Settlement Award. "Aggrieved Employees" are all individuals who were employed
22 by Defendants in non-exempt positions in the State of California at any time during the PAGA
23 Period (June 30, 2021, through March 30, 2023). Pursuant to Labor Code section 2699,
24 subdivision (1)(2), the LWDA was provided notice of the Agreement and these settlement terms
25 and has not indicated any objection thereto. The Court finds the PAGA Settlement Amount to be
26 reasonable.

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1 22. Pursuant to Labor Code section 2699, subdivision (1)(2), Class Counsel shall
2 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
3 entry.

4 23. Neither the Agreement nor this Settlement is an admission by Defendants, nor is
5 this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of
6 any wrongdoing by Defendants or that this Action is appropriate for class or representative
7 treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment,
8 the Agreement, nor any document referred to herein, nor any action taken to carry out the
9 Agreement is, may be construed as, or may be used as an admission by or against Defendants of
10 any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement,
11 and any negotiations or proceedings related thereto, shall not in any event be construed as, or
12 deemed to be evidence of, an admission or concession with regard to the denials or defenses by
13 Defendants. Notwithstanding these restrictions, Defendants may file in the Action or in any other
14 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
15 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
16 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
17 Plaintiff's Releases, Released Class Claims, Released FLSA Claims, and/or Released PAGA
18 Claims.

19 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
20 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
21 and Judgment shall be posted on the Administrator's settlement website as set forth in the Class
22 Notice to the Class. It shall not be necessary to send notice of entry of this Final Approval Order
23 and Judgment to individual Class Members.

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

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

5 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
6 Plaintiffs, and all members of the Class, shall take nothing in the Action.

7 27. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
8 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
9 supervise and adjudicate any dispute arising from or in connection with the distribution of
10 settlement benefits.

11 28. All Parties shall bear their own attorneys' fees and costs, except as otherwise
12 provided in the Agreement and in this Final Approval Order and Judgment.

13 29. Upon the Effective Date, and except as to such rights or claims as may be created
14 by this Agreement, Plaintiffs and all Participating Individuals shall be deemed to have, and by
15 operation of the Judgment shall have, released, and discharged finally, forever and with prejudice
16 claims against Released Parties as follows:

17 (a) All named Plaintiffs and their respective spouses, representatives, agents,
18 attorneys, heirs, administrators, successors, and assigns shall generally, release and discharge
19 Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory
20 damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or
21 related to all facts, transactions, and occurrences – known or unknown – as of the date they
22 executed the Agreement, including, but not limited to, all Released FLSA Claims, Released Class
23 Claims, and Released PAGA Claims. Plaintiffs' Release does not extend to any claims or actions
24 to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
25 benefits, social security benefits, workers' compensation benefits that arose at any time, or to
26 claims or actions based on occurrences after they execute this Agreement. Each Plaintiff
27 acknowledges he or she may discover facts or law different from, or in addition to, the facts or law
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1 that he or she now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release
2 shall be and remain effective in all respects, notwithstanding such different or additional facts, or
3 their discovery thereof. For purposes of Plaintiffs' Release only, each Plaintiff expressly waives
4 and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil
5 Code, which reads:

6 A general release does not extend to claims that the creditor or
7 releasing party does not know or suspect to exist in his or her favor
8 at the time of executing the release, and that if known by him or her
9 would have materially affected his or her settlement with the debtor
 or released party.

10 (b) All Opt-In Plaintiffs shall release and discharge Released Parties from any
11 and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest,
12 attorneys' fees, costs, liabilities, expenses, and losses under the FLSA during the Collective
13 Period, which are based on or arising from the factual predicates that were alleged, or reasonably
14 could have been alleged, in the Operative Complaint ("Released FLSA Claims").

15 (c) All Participating Class Members shall release and discharge Released
16 Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages,
17 penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses based on or arising from
18 factual predicates alleged, or reasonably could have been alleged, in the Operative Complaint,
19 including, but not limited to: (a) any alleged failure to pay all wages due including minimum
20 wages or overtime wages; (b) any alleged failure to timely pay wages at termination or during
21 employment; (c) any alleged failure to provide meal or rest periods or to pay meal or rest period
22 premiums; (d) any alleged failure to maintain and preserve, in a centralized location in California,
23 any required payroll or employee records; (e) any alleged failure to provide compliant and
24 accurate wage statements; (f) any alleged failure to reimburse business expenses; (g) any alleged
25 failure to pay sick wage; (h) any right or claim for civil penalties pursuant to the California Labor
26 Code, the California Industrial Welfare Commission Wage Orders, the California Private
27 Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*) based on the foregoing alleged
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1 claims; (i) any right or claim for unfair business practices in violation of California Business &
2 Professions Code § 17200 *et seq.* based on the foregoing alleged claims; and (j) any violation or
3 breach of the California Labor Code arising from or related to the conduct or omission alleged, or
4 could have reasonably been alleged, in the Operative Complaint and the conduct or omission
5 ascertained in the course of the Action, including without limitation, any violation or breach of
6 California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512,
7 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, or any other similar state
8 or local statute, wage order, rule, regulation, ordinance, or authority, during the Class Period
9 (“Released Class Claims”). Except as set forth in Paragraphs 4.2 and 4.4 of the Agreement,
10 Participating Class Members do not release any other claims, including claims for vested benefits,
11 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
12 insurance, disability, social security, workers’ compensation, or claims based on facts occurring
13 outside the Class Period.

14 30. All Aggrieved Employees shall release and discharge, on behalf of themselves and
15 their respective former and present representatives, agents, attorneys, heirs, administrators,
16 successors, and assigns, the Released Parties from all individual and representative claims for civil
17 penalties under PAGA that were alleged, or reasonably could have been alleged, in the Action
18 based on the facts stated in the Operative Complaint and ascertained in the course of the Action,
19 including, but not limited to, any right or claim for PAGA penalties predicated on alleged
20 nonpayment or under-payment of minimum and overtime wages, failure to pay or under-payment
21 of wages, overtime, meal and rest period premiums, failure to provide meal and rest periods,
22 nonpayment or under-payment of premiums for meal or rest period violations, failure to timely
23 pay wages, failure to pay all wages due at termination, failure to maintain accurate records, failure
24 to provide and/or maintain accurate and itemized wage statements, failure to reimburse business
25 expenses, failure to pay sick wages, and any claims for PAGA civil penalties based on the
26 foregoing alleged claims under the California Labor Code, Wage Orders, regulations, and/or other
27 provisions of law, including any alleged violations of the California Labor Code §§ 200, 201,
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201.3, 202, 203, 204, 223, 226, 226.7, 233, 246, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, during the PAGA Period ("Released PAGA Claims"). The Parties agree that there shall be no right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA component of the Settlement

31. The Administrator shall include the release language on the back of each Settlement Award check, as appropriate under the Agreement. If at the conclusion of the 180-day check cashing period set forth above, any funds remain from checks that are returned as undeliverable or are not negotiated, those monies shall be tendered to the State of California Controller's Office, Unclaimed Property Fund, in the name of the Participating Individual or Opt-In Plaintiff until such time as he or she claims his or her property, as allowed by law, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b).

32. The Court hereby enters judgment in the entire Action as of the filing date of this Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction over the interpretation, implementation, and enforcement of the Settlement and all orders entered in connection therewith pursuant to California Code of Civil Procedure section 664.6.

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

Dated: 10-18-24


HON. BLAINE BOWMAN
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA