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RENE LOPEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RENE LOPEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

SUNNY DELIGHT BEVERAGES CO., a
Florida corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No.: 30-2022-01280502-CU-OE-CXC

*[Assigned for all purposes to the Honorable
Melissa R. McCormick, Dept. CX104]*

**NOTICE OF RULING RE PLAINTIFF'S
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

[Continued] Preliminary Approval Hearing

Date: August 8, 2024

Time: 2:00 p.m.

Dept. CX104

[FAC Filed: November 21, 2022]

[Complaint Filed: September 14, 2022]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** Plaintiff Rene Lopez hereby gives notice of the
3 Court's Minute Order issued on April 4, 2024, which is attached hereto as **Exhibit A**.

4 Respectfully submitted,
5 Dated: April 18, 2024 LIDMAN LAW, APC

6 By: 
7 Scott M. Lidman
8 Milan Moore
9 Attorneys for Plaintiff
10 RENE LOPEZ
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EXHIBIT A

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 04/04/2024 TIME: 02:00:00 PM DEPT: CX104
JUDICIAL OFFICER PRESIDING: Melissa R. McCormick
CLERK: V. Harting
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: I. Olivares

CASE NO: **30-2022-01280502-CU-OE-CXC** CASE INIT.DATE: 09/14/2022
CASE TITLE: **Lopez vs. Sunny Delight Beverages Co., a Florida corporation**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 74183044

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: Rene Lopez

CAUSAL DOCUMENT/DATE FILED: Motion - Other For Approval of Class Settlement, 01/04/2024

APPEARANCES

No Appearance by all parties

Tentative Ruling posted on the Internet.

All parties submitted on the Court's tentative ruling.

The Court confirms the tentative ruling. The Court's final ruling is attached hereto and incorporated herein by reference.

Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended documents, and file a proof of service.

Lopez vs. Sunny Delight Beverages Co., a Florida corporation
Case No. 30-2022-01280502

Court's Final Ruling

Plaintiff Rene Lopez's Motion for Preliminary Approval of Class Action and PAGA Settlement

The court has reviewed and considered the papers filed in support of plaintiff Rene Lopez's motion for preliminary approval of an \$850,000 class action and PAGA settlement. The court has the following questions and comments:

As to the settlement:

1. The Settlement Class Members' Release in paragraph 4(A) is overbroad. Moore Decl. (ROA 78) Ex. 2 (Stipulation of Class and PAGA Action Settlement, ¶ 4(A)). The release must be fairly tailored to the claims that were or reasonably could have been asserted in the lawsuit based on the facts alleged in the operative complaint. E.g., the word "reasonably" should be inserted before "could have been pled"; "[t]he Complaints" should be replaced with "[t]he Second Amended Complaint"; and the phrase "(including the contemplated Second Amended Complaint)" should be deleted. The phrase "arising in any way from the facts alleged in the Complaints" appears to be redundant.
2. The PAGA Release in paragraph 4(B) is overbroad. Moore Decl. (ROA 78) Ex. 2 (Stipulation of Class and PAGA Action Settlement, ¶ 4(B)). The release for aggrieved employees other than plaintiff should not release more than the civil penalties available under PAGA based on the facts alleged in the operative complaint and notice letter(s) to the LWDA.
3. Paragraph 4(D) of the settlement agreement states the releases shall become effective on the Effective Date "provided Defendant fully funds the Gross Settlement Amount and the employer's share of payroll taxes pursuant to the terms of this Agreement," and that the releases shall become effective on the "Effective Date of the Releases." It appears the "Effective Date" and the "Effective Date of the Releases" could be different dates. Paragraph 5(C) of the settlement agreement states defendant will deposit the settlement funds and the employer's share of the payroll taxes within 30 days of the Effective Date. These provisions appear to contemplate that the releases could become effective before defendant has fully funded the settlement and paid the employer's share of the payroll taxes. The court will not require the class members to release their claims before defendant pays all sums owed. In addition, these provisions appear to differ from the explanation in the notice (at page 5).
4. Class members should not be required to state "the factual basis" for any objections to the settlement nor need they state in advance whether they intend to appear at the final approval hearing. Moore Decl. (ROA 78) Ex. 2 (Stipulation of Class and PAGA Action Settlement, ¶ 12(D)). Paragraphs 2 and 3 of the Objection Form (Stipulation of Class and PAGA Action Settlement, Ex. A (at p. 10)) should be removed, as should the third sentence of the first paragraph of the Objection Form.

"[W]ritten object" in the first sentence of the first paragraph of the Objection Form should be "written objection."

5. The parties should file with the court all disputes submitted by class members, including the evidence submitted and the resolution of the disputes. Although the settlement administrator may make the initial decision regarding claim disputes (see Moore Decl. (ROA 78) Ex. 2 (Stipulation of Class and PAGA Action Settlement, ¶ 12(E)), the settlement agreement should be revised to more clearly state that the court may review any decision made by the settlement administrator regarding a claim dispute. The notice should also be revised accordingly.

As to the notice:

6. The notice should be revised consistent with the above.
7. Do the notice and related documents need to be translated into any language(s) other than Spanish? Also, copies of the certified translations of the notice and related documents should be filed with the court and attached to the proposed order as exhibits.
8. The definition of "PAGA Employees" on pages 4 and 5 of the notice is not the same definition as on page 6 of the notice, in paragraph 3 of the settlement agreement, and in paragraph 1 of the proposed order. The parties should address this discrepancy in their supplemental filing.
9. Page 6 of the notice ("Exclude Yourself from the Settlement") should include that class members will be bound by the PAGA Release even if they do not cash their checks.
10. The settlement administrator should post on its website all key case documents, including the operative complaint, the PAGA notice letter(s), the settlement agreement and any amendments thereto, the notice packet, the orders granting preliminary and final approval, and the judgment. The judgment should be posted on the settlement administrator's website for at least 180 days.
11. The last sentence of the notice on page 7 ("BY ORDER OF THE COURT ENTERED ON . . .") should be removed.

As to the proposed order:

12. The proposed order should be revised consistent with the above.
13. The settlement agreement and any amendment(s) thereto and the class notice packet (in English and Spanish) should be attached to the proposed order as exhibits.
14. Paragraph 1 of the proposed order should include findings that the settlement is "fair, adequate and reasonable, and in the best interests of the class members."
15. The word "preliminarily" should be added in paragraph 2 before "designates" in two places.
16. Paragraph 7 of the proposed order should be removed.
17. The proposed order should include the procedures and schedule for objections, exclusions and disputes.

18. In paragraph 11, the phrase "of up to" should replace "totaling" on line 9; the phrase "up to" should be inserted before "\$7,500.00" on line 10; and the phrase "up to" should be inserted before "\$8,500.00" on line 13.

The hearing on plaintiff's motion for preliminary approval is continued to August 8, 2024 at 2:00 p.m. in Department CX104 to enable the parties to address and respond to the above issues. *See also* Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement shall be submitted, rather than an "amended settlement agreement," to streamline the court's review of the documents. The parties shall provide redlined copies of any revised documents (e.g., revised settlement agreement, revised notice, revised proposed order).

Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended documents, and file a proof of service.

[illegible]

On April 18, 2024, I served the foregoing document(s) described as: **NOTICE OF RULING RE PLAINTIFF'S PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** on the interested party(ies) in this action as follows:

PROOF OF SERVICE