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and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

MARKEL ROCKE, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

PINK CHICKU LLC, a Limited Liability
Company; and DOES 1 through 50,
inclusive,

Defendant.

Case No.: 23CV413573

[Assigned for all purposes to Hon. Charles F.
Adams, Dept. 7]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004**

Date: April 11, 2024
Time: 1:30p.m.
Courtroom: Dept. 7
Judge: Hon. Charles F. Adams

Action Filed: April 5, 2023
Trial Date: Not Set

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

2 Plaintiff MARKEL ROCKE (“Plaintiff”) and Defendant PINK CHICKU LLC (“Defendant”)
3 (Plaintiff and Defendant are the “Parties”) have reached terms of settlement of this action alleging a
4 claim for relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698,
5 *et seq.* (“PAGA”).

6 Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the
7 settlement of the claims asserted against Defendant in this action. Specifically, Plaintiff moves for an
8 order:

9 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
10 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
11 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
12 allocated to attorney’s fees and costs; the amount allocated to general release payment to Plaintiff;
13 the amount allocated to the settlement administrator; and,

14 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
15 Agreement.

16 The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
17 RELEASE (referred to as the “Agreement,” or “Settlement,” and attached to the Declaration of Lilit
18 Tunyan as Exhibit 1) is conditioned upon the Court’s approval. Capitalized terms in this Order have the
19 same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the
20 Settlement is as follows:

21 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
22 “PAGA Members”) are: “All non-exempt employees who are or were employed
23 by Defendant within the State of California from April 5, 2022 through the date
24 the date the court enters an order approving this Settlement.” It is estimated that
25 there are approximately 4,815 pay periods as of October 11, 2023. (Agreement, ¶
26 ¶ 2, 10.)

27 (b) No Reversion: The Settlement is non-reversionary. (Agreement, ¶ 7.)

28 (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of

\$105,000.00 (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel’s attorney’s fees and costs, Plaintiff’s General Release payment and the settlement administrator’s fees and costs. (Agreement, ¶ 7.)

(d) Net Settlement Amount: At least **\$42,755.37** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$32,066.53** under the Agreement, and Aggrieved Employees will receive at least **\$10,688.84**. (Agreement, ¶ 7.d.)

(e) Attorney’s Fees: Plaintiff’s Counsel request an award of attorney’s fees in the amount of **\$35,000.00**, which is one third of the GSA. (Agreement, ¶ 7.a.)

(f) Litigation Costs: Plaintiff’s Counsel’s litigation costs are capped to a maximum amount of \$17,000. Those actual costs are \$13,176.72 which include the future motion filing fees. Therefore, **\$13,294.63** is requested, by Plaintiff. (Agreement, ¶¶ 7.a, 13.b.iii)

(g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator ILYM Group, Inc., which has agreed to perform Settlement Administrator duties for a flat fee not to exceed **\$3,950.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 14)

(h) General Release by Plaintiff: Plaintiff shall receive **\$10,000.00** as a consideration for general release of her individual wage and hour and other claims. (Agreement, ¶ ¶4, 7.c.)

(i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be sent to the California State Controller’s Unclaimed Property division.(Agreement, ¶ 13.c)

(j) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a release from the LWDA and each and every Aggrieved Employee,

including Plaintiff. (Agreement, ¶ 3.)

(k) Tax Allocation: The Settlement Payments to Aggrieved Employees are classified as other miscellaneous income and will be allocated as 100% penalties, which will be reported on IRS Form 1099-MISC, if required. (Agreement, ¶ 11)

(l) No Right to Opt-out: There is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude themselves from the Settlement. (Agreement, ¶6.)

(m) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was provided to the LWDA and attaches the confirmatory submission documents.

(n) (Declaration of Lilit Tunyan, hereinafter “Tunyan Decl.”, ¶ 47 and Exh. 3.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement attached as Exhibit 1 to the Declaration of Lilit Tunyan. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All non-exempt employees who are or were employed by Defendant within the State of California from April 5, 2022 through April 11, 2024.

This Order incorporates by reference the definitions in the Settlement, and all capitalized terms defined therein shall have the same meaning in this Order as set forth in the Settlement.

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendant' potential liability, the benefit to the State of California, allocation of settlement proceeds

1 among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties’
2 respective positions rather than the result of a finding of liability at trial. The Court further finds that the
3 terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further
4 prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of
5 the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged
6 violations.

7 4. The Court hereby approves ILYM Group, Inc. to serve as the settlement administrator
8 (“Settlement Administrator”). The Settlement Administrator will be paid pursuant to the Agreement’s
9 terms for such distribution, in the requested amount of **\$3,950.00** out of the Gross Settlement Amount to
10 effectuate Administration.

11 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
12 **\$105,000.00**, less administration costs, attorney’s fees, and costs awarded to Plaintiff’s counsel,
13 Plaintiff’s General Release payment. The LWDA shall receive 75% of the penalties allocated, which is
14 **\$32,066.53**. Aggrieved Employees shall receive 25% of the penalties allocated, which is **\$10,688.84**.

15 6. The Court hereby awards Counsel attorneys’ fees in the amount of **\$35,000.00**. The
16 Court finds that the attorneys’ fees are reasonable compared to amounts routinely approved in similar
17 settlements and as guided by the California Supreme Court’s decision concerning the awarding of fees
18 from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).
19 Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were
20 necessarily precluded from pursuing other potential sources of fees because of work in connection with
21 this Action. The Court observed that this is not a class action. It is more akin to contingent
22 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
23 claim. Attorneys’ fees that are fifty percent of a common fund are typically considered the upper limit,
24 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van*
25 *Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
26 where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million). Based on
27 these considerations, including the lodestar cross-check, a fee award of one third of the total settlement
28 amount is reasonable.

7. The Court hereby awards Counsel litigation costs in the total amount of **\$13,294.63**.

8. The Court hereby awards General Release Payment in the total amount of **\$10,000** to Plaintiff.

9. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Agreement.

10. The Court approves, both as to form and content, the Notice of PAGA settlement to Aggrieved Employees attached hereto as **Exhibit 1**.

11. Pursuant to the terms of the Settlement, the released persons and entities include Defendant (as defined above) and all of their current and former officers, directors, employees and agents (referred to in the Settlement as the "Released Parties").

12. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA claims are released as follows:

The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the Lawsuit had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et. seq. as against Defendant and each of its past or present owners, officers, directors, employees, agents, shareholders, employees, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers (collectively, the "Released Parties"). It is expressly understood and agreed that this settlement effects a full release of the PAGA claims for civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et. seq. ("PAGA") based upon the allegations of Defendant's conduct set forth in Plaintiff's pre-filing PAGA notice letter filed with the LWDA attached as Exhibit A upon the Effective Date and full funding of the Gross Settlement amount (all of the foregoing are collectively referred to as "Released PAGA Claims"). With the exception of Plaintiff, who is providing a general release of all claims, this settlement shall not impact aggrieved employees' ability to assert claims (claims for wages and other damages) other than the PAGA claims being released by this Settlement.

13. The action is DISMISSED WITH PREJUDICE.

14. The Court will enter Final Judgment in accordance with this Order.

15. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

Dated: _____

Hon. Charles F. Adams
SANTA CLARA COUNTY SUPERIOR COURT
JUDGE

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and
5 not a party to the within action; my business address is 535 N Brand Blvd. Suite 285, Glendale,
6 California 91203.

7 On the date indicated below, I served the document described as **[PROPOSED] ORDER**
8 **GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF**
9 **CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF**
10 **2004** on the interested parties in this action by sending a true copy thereof to interested parties as
11 follows and as stated on the attached service list:

12 Marlene S. Muraco
13 mmuraco@littler.com

14 Alec DiMario
15 adimario@littler.com

16 Yvonne Zapien
17 yzapien@littler.com

18 Kim Alvarez
19 kalvarez@littler.com

20 **LITTLER MENDELSON, P.C.**

21 50 W. San Fernando

22 7th Floor

23 San Jose, California 95113-2434

24 Telephone: 408-998- 4150

25 Facsimile: 408-288-5686

26 **Attorneys for Defendant PINK CHICKU LLC**

27 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-
28 mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of
record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
service, I caused the documents to be sent to the persons at the electronic service addresses listed
above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on January 2, 2024, at Glendale, California.

24
25 Lilit Tunyan

26 Name

24
25 

26 Signature