

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com

3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 NATALIAH DEVOL GREEN, and all others similarly situated
(Additional attorneys for Plaintiff(s) on following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

13 NATALIAH DEVOL GREEN, on behalf of
14 herself and all others similarly situated, and as an
15 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
16 Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 MORGAN COOKIE GROUP CULVER LLC, a
20 California limited liability company; MORGAN
COOKIE GROUP LLC, a California limited
21 liability company; CRUMBL LLC, a Utah
limited liability company; POCKETS SMITTY
22 CORONA LLC, a Utah limited liability
company; and DOES 1–50, inclusive,

23 *Defendant(s).*
24
25
26
27

Case No. 23STCV11939

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: May 25, 2023
Dept: Dept. 11, The Honorable
David S. Cunningham

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

BENJAMIN J. SMITH (SBN 266712)
Benjy@thesmithlawcorp.com
SMITH LAW
8605 Santa Monica Bl
PMB 97638
West Hollywood, CA 90069-4109
Telephone: (818) 839-9607
Facsimile: (818) 839-9700

Attorneys for Plaintiff(s),
NATALIAH DEVOL GREEN, and all others similarly situated

1 The Motion of Plaintiff Nataliah Devol Green (hereafter referred to as “Plaintiff”)
2 for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the
3 Court, The Honorable David S. Cunningham presiding. The Court having considered the Motion,
4 the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
5 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
9 has determined only that there is sufficient evidence to suggest that the proposed settlement
10 might be fair, adequate, and reasonable, and that any final determination of those issues will be
11 made at the final hearing. The Court will make a determination at the hearing on the motion for
12 final approval of class action settlement (the “Final Approval Hearing”) as to whether the
13 Settlement is fair, adequate and reasonable to the Settlement Class.

14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
15 (collectively “Class Members”), all persons employed or otherwise contracted by (i) Pockets
16 Smitty Two, LLC; (ii) Pockets Smitty Riverside, LLC; (iii) Pockets Smitty Upland, LLC; (iv)
17 Pockets Smitty Menifee, LLC; (v) Morgan Cookie Group, LLC; (vi) Morgan Cookie Group
18 Culver, LLC; (vii) Pockets Smitty Fontana, LLC; (viii) Morgan Cookies Group Downey, LLC;
19 (ix) Pockets Smitty Corona, LLC and/or (x) Pockets Smitty Rosemead, LLC as non-exempt,
20 hourly employees during the Class Period. The “Class Period” shall mean the period of time from
21 May 25, 2019, through the date of preliminary approval of this Settlement.

22 3. Based on their records, Defendants estimate that, as of the date of the Settlement
23 Agreement, (1) there are 873 Class Members and 18,013.00 Total Class Workweeks during the
24 Class period and (2) there were 683 Aggrieved Employees who worked 13,691 Pay Periods
25 during the PAGA Period.

26 4. “Effective Date” means the date by when both of the following have occurred: (a)
27 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
28 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no

1 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
2 one or more Participating Class Members objects to the Settlement, the day after the deadline for
3 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
4 day after the appellate court affirms the Judgment and issues a remittitur.

5 5. This action is provisionally certified pursuant to section 382 of the California Code
6 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
7 purposes of settlement only with respect to the proposed Settlement Class.

8 6. Not later than 15 days after the Court grants Preliminary Approval of the
9 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
10 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
11 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
12 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
13 employees who need access to the Class Data to effect and perform under the Settlement
14 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
15 discover that the Class Data omitted class member identifying information and to provide
16 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
17 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
18 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
19 issues related to missing or omitted Class Data.

20 7. No later than three (3) business days after receipt of the Class Data, the
21 Administrator shall notify Class Counsel that the list has been received and state the number of
22 Class Members, PAGA Members, Class Workweeks, and PAGA Pay Periods in the Class Data.

23 8. Using best efforts to perform as soon as possible, and in no event later than 14
24 days after receiving the Class Data, the Administrator will send to all Class Members identified
25 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet
26 with Spanish translation, if applicable substantially in the forms attached to the Settlement as
27 Exhibits A, B, C, and D. The first page of the Class Notice shall prominently estimate the dollar
28 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class

1 Member, and the number of Class Workweeks and PAGA Pay Periods (if applicable) used to calculate
2 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
3 addresses using the National Change of Address database.

4 9. Not later than three (3) business days after the Administrator's receipt of any
5 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
6 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
7 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
8 the Notice Packet to the most current address obtained. The Administrator has no obligation to
9 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
10 returned by the USPS a second time.

11 10. Class Counsel's contact information is David Glenn Spivak, Esq., The Spivak Law
12 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069 and Benjamin Smith,
13 Esq., Smith Law, 8605 Santa Monica Bl, PMB 97638, West Hollywood, CA 90069. Defense
14 Counsel's contact information is Chris Jalian of Paul Hastings LLP, 515 South Flower Street
15 Twenty-Fifth, Floor, Los Angeles, California 90071-2228 and Sara A. L. Abarbanel of Foley &
16 Lardner LLP, 11988 EL CAMINO REAL, SUITE 400, SAN DIEGO, CA 92130-2594

17 11. The deadlines for Class Members' written objections, Challenges to Class
18 Workweeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended
19 an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
20 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
21 extended deadline with the re-mailed Notice Packet.

22 12. If the Administrator, Defendants or Class Counsel is contacted by or otherwise
23 discovers any persons who believe they should have been included in the Class Data and should
24 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
25 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
26 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
27 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
28 requiring them to exercise options under the Settlement Agreement not later than 14 days after

1 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

2 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
3 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
4 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
5 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
6 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
7 the Class Member's election to be excluded from the Settlement and includes the Class Member's
8 name, address and email address or telephone number. To be valid, a Request for Exclusion must
9 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
10 in Settlement form, attached as Exhibit B to the Settlement, may be used for this purpose but is
11 not required.

12 14. The Administrator may not reject a Request for Exclusion as invalid because it
13 fails to contain all the information specified in the Class Notice. The Administrator shall accept
14 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
15 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
16 determination shall be final and not appealable or otherwise susceptible to challenge. If the
17 Administrator has reason to question the authenticity of a Request for Exclusion, the
18 Administrator may demand additional proof of the Class Member's identity. The Administrator's
19 determination of authenticity shall be final and not appealable or otherwise susceptible to
20 challenge.

21 15. Every Class Member who does not submit a timely and valid Request for Exclusion
22 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
23 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
24 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
25 Participating Class Member actually receives the Class Notice or objects to the Settlement.

26 16. Every Class Member who submits a valid and timely Request for Exclusion is a
27 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
28 right to object to the class action components of the Settlement. Plaintiff releases all claims for

1 civil penalties that could have been sought by the Labor Commissioner for the violations
2 identified in the PAGA notice letter Plaintiff sent to the LWDA. Plaintiff does not release the
3 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
4 Participating Class Member.

5 17. Challenges to Calculation of Class Workweeks/PAGA Pay Periods. Each Class
6 Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14
7 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class
8 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
9 This is also known as a dispute. A Class Workweek/PAGA Pay Period Dispute form, attached
10 as Exhibit C to the Settlement, may be used for this purpose but is not required. The Class
11 Member may challenge the allocation by communicating with the Administrator via fax, email or
12 mail. The Administrator must encourage the challenging Class Member to submit supporting
13 documentation. In the absence of any contrary documentation, the Administrator is entitled to
14 presume that the Class Workweeks/ PAGA Pay Periods contained in the Class Notice are correct
15 so long as they are consistent with the Class Data. The Administrator's determination of each
16 Class Member's allocation of Class Workweeks and/or PAGA Pay Periods shall be final and not
17 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
18 copies of all challenges to calculation of Class Workweeks and/or PAGA Pay Periods to Defense
19 Counsel and Class Counsel and the Administrator's determination the challenges.

20 18. Objections to Settlement. Only Participating Class Members may object to the
21 class action components of the Settlement and/or this Agreement, including contesting the
22 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
23 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

24 19. Participating Class Members may send written objections to the Administrator, by
25 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
26 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
27 Participating Class Member who elects to send a written objection to the Administrator must do
28 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional

1 14 days for Class Members whose Notice Packet was re-mailed). An Objection form attached as
2 Exhibit D to the Settlement may be used for this purpose but is not required.

3 20. Non-Participating Class Members have no right to object to any of the class action
4 components of the Settlement.

5 21. Not later than 14 days before the date by which Plaintiff is required to file the
6 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
7 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
8 compliance with all of its obligations under the Settlement Agreement, including, but not limited
9 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
10 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
11 from Settlement it received (both valid or invalid), the number of written objections and attach
12 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
13 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
14 declaration(s) in Court.

15 22. The Court approves, as to form and content, the Class Notice in substantially the
16 form attached as Exhibit A to the Settlement, the Election Not to Participate in Settlement form
17 in substantially the form attached as Exhibit B to the Settlement, the Class Workweeks Dispute
18 form in substantially the form attached as Exhibit C to the Settlement, and the Objection form in
19 substantially the form attached as Exhibit D to the Settlement.

20 23. The Court approves, for settlement purposes only, David Glenn Spivak of The
21 Spivak Law Firm and Benjamin J. Smith of Smith Law as Class Counsel.

22 24. The Court approves, for settlement purposes only, Nataliah Devol Green as the
23 Class Representative.

24 25. The Court approves Phoenix Class Action Administration Solutions as the
25 Administrator.

26 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and
27 costs subject to final review by the Court.

28 27. The Court preliminarily approves the estimated Administrator costs payable to the

1 Administrator subject to final review by the Court.

2 28. The Court preliminarily approves Plaintiff's Class Representative Service
3 Payment subject to final review by the Court.

4 29. The Court preliminarily approves the installment payments and distribution
5 schedules incorporated in the Settlement.

6 30. A Final Approval Hearing shall be held on ____ at _____.m. in Department Dept. 11
7 of the Superior Court for the State of California, County of Los Angeles, located at the Spring
8 Street Courthouse, 312 N. Spring Street, Los Angeles, CA 90012 to consider the fairness,
9 adequacy and reasonableness of the proposed Settlement preliminarily approved by this
10 Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees
11 and costs and the Class Representative Service Payment to the Class Representative. The notice
12 of motion and all briefs and materials in support of the motion for final approval of class action
13 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
14 Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any
15 continuance of the hearing of the motion for final approval.

16 31. If for any reason the Court does not execute and file a Final Approval Order and
17 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
18 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
19 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
20 litigation, as more specifically set forth in the Settlement.

21 32. The Court expressly reserves the right to adjourn or continue the Final Approval
22 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
23 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

24 **IT IS SO ORDERED.**

25 _____
26 **DATE**

25 _____
26 **THE HONORABLE DAVID S.**
27 **CUNNINGHAM**
28 **SUPERIOR COURT JUDGE**