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

SEAN W POWERS, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

MARIO'S PLACE, INC., a California
Corporation; and DOES 1 through 50, inclusive,
Defendants.

Case No.: CVRI2301652

[Assigned for all purposes to Hon. Harold W.
Hopp, Dept. 1]

**AMENDED [PROPOSED] ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS AND PAGA REPRESENTATIVE
ACTION SETTLEMENT**

Reservation ID: 984811064175
Date: June 5, 2024
Time: 8:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Harold W. Hopp

Action Filed: April 3, 2023
Trial Date: Not Set

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

2 Plaintiff SEAN W POWERS (“Plaintiff”) and Defendant MARIO’S PLACE, INC.
3 (“Defendant”) have reached settlement for a putative class and PAGA representative action.

4 Plaintiff has filed a motion for preliminary approval of a class and PAGA representative action
5 settlement of the claims asserted against Defendant in this action, memorialized in the JOINT
6 STIPULATION OF AMENDED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT
7 (see Supplemental Declaration of Lilit Tunyan in Support of Plaintiff’s Motion for Preliminary Approval
8 of Class and PAGA Representative Action Settlement [“Tunyan Decl.”], at Exhibit 1).

9 After reviewing the Agreement, the Notice process, and other related documents, and having
10 heard the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

11 1. The Court preliminarily approves JOINT STIPULATION OF CLASS AND PAGA
12 REPRESENTATIVE ACTION SETTLEMENT (“Agreement” or “Settlement”), attached as
13 “EXHIBIT 1” to the Declaration of Lilit Tunyan in Support of Plaintiff’s Motion for Preliminary
14 Approval of Class and PAGA Action Settlement. The Court preliminarily finds that the terms of the
15 proposed Settlement are fair, reasonable, and adequate, pursuant to California Code of Civil Procedure
16 § 382.

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

19 3. The Court finds that the Settlement has been reached as a result of intensive, serious and
20 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
21 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate
22 their respective positions. The Court also finds that settlement at this time will avoid additional
23 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
24 of the action. The Court finds that the risks of further prosecution are substantial.

25 4. The parties’ Settlement is granted preliminary approval as it meets the criteria for
26 preliminary settlement approval. The Settlement falls within the range of reasonableness and appears to
27 be presumptively valid, subject only to any objections that may be raised at the final fairness hearing.
28 The Settlement Class meets the requirements for conditional certification for settlement purposes only

1 under Code of Civil Procedure § 382 in that: (a) the Class is ascertainable and so numerous that joinder
2 of all members of the Class is impracticable; (b) common questions of law and fact predominate, and
3 there is a well-defined community of interest amongst the members of the Class with respect to the
4 subject matter of the litigation; (c) Plaintiff's claims are typical of the claims of the members of the
5 Class; (d) Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class
6 action is superior to other available methods for the efficient adjudication of the controversy; and (f)
7 Class Counsel is qualified to act as counsel for Plaintiff in his individual capacity and as the
8 representative of the Class. The Court finds that it is appropriate to notify the members of the proposed
9 settlement Class of the terms of the proposed settlement.

10 5. The Court preliminarily finds that the Settlement, including the allocations for the
11 Attorneys' Fees and Costs, Service Payment to Plaintiff, LWDA Payment, Settlement Administration
12 Fees, and payments to the Settlement Class Members and PAGA Members provided thereby, appear to
13 be within the range of reasonableness of a settlement that could ultimately be given final approval by this
14 Court. Indeed, the Court has reviewed the monetary recovery that is being granted as part of the
15 Settlement and preliminarily finds that the monetary settlement awards made available to the Class
16 Members and PAGA Members are fair, adequate, and reasonable when balanced against the probable
17 outcome of further litigation relating to certification, liability, and damages issues.

18 6. The following persons are certified as Class Members solely for the purpose of entering
19 a settlement in this matter:

20 All individuals employed by Defendant in California and classified as "non-
21 exempt" at any time during the Class Period (the "Class Period" is April 3, 2019,
22 through May 12, 2024). "Settlement Class Members" are those Class Members who do
23 not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 4-
24 5.)

25 7. The PAGA Employee is defined as follows:

26 All Class Members that worked at any time during the PAGA Period (the "PAGA
27 Period" is April 3, 2022 through May 12, 2024.) All PAGA Employees are "aggrieved
28 employees" as defined pursuant to PAGA. PAGA Employees cannot opt out of the
settlement of the PAGA claim. (Settlement, ¶¶ 11-12.)

8. Plaintiff SEAN W POWERS is provisionally appointed as the representative of the
class ("Class Representative").

1 9. The Court provisionally appoints Tunyan Law, APC as counsel for the Class (“Class
2 Counsel”). The Court finds Plaintiff’s counsel are adequate, as they are experienced in wage and hour
3 class action litigation and have no conflicts of interest with absent Settlement Class Members, and that
4 they adequately represented the interests of absent class members in the Litigation.

5 10. The Court provisionally appoints Phoenix Class Action Administration Solutions
6 (“Phoenix”) to act as the Settlement Administrator, pursuant to the terms set forth in the Agreement.
7 Phoenix’s services include translating, printing, distributing, and tracking Notice Packets and other
8 documents for the Settlement, calculating and distributing payments due under the Settlement, issuing of
9 1099 and W- 2 IRS Forms and all required tax reporting, filings, withholdings, and remittances,
10 providing necessary reports and declarations, and other duties and responsibilities set forth in the
11 Agreement, and as requested by the Parties.

12 11. Defendant is directed to provide the Settlement Administrator the names and most recent
13 known mailing addresses of Class Members and any other information required in accordance with the
14 Agreement as may be necessary for the Settlement Administrator to independently calculate and review
15 the Workweeks attributed to each Class Member (collectively referred to as the “Class List”), no later
16 than 15 calendar days after entry of this Order. (Settlement, ¶ 34(a).)

17 12. The Court approves, both as to form and content, the Notice of Class Action Settlement
18 (“Class Notice”), Exclusion Form (“Exclusion Form”), and Objection Form (“Objection Form”),
19 attached hereto as “**Exhibit 1,**” “**Exhibit 2,**” and “**Exhibit 3,**” respectively. The Class Notice, Exclusion
20 Form, and Objection Form are collectively referred to as the “Notice Packet.” The Notice Packet shall be
21 provided to Class Members in the manner set forth in the Settlement. The Court finds that the Notice
22 Packet appears to fully and accurately inform the Class Members of all material elements of the
23 Settlement, of Class Members’ right to be excluded from the Class Settlement by submitting a Request
24 for Exclusion, of Class Members’ right to dispute the Workweeks credited to each of them by submitting
25 a Workweeks Dispute, and of each Settlement Class Member’s right and opportunity to object to the
26 Class Settlement by submitting a Notice of Objection to the Settlement Administrator. The Court further
27 finds that distribution of the Notice Packet substantially in the manner and form set forth in the
28 Agreement and this Order, and that all other dates set forth in the Agreement and this Order, meet the

requirements of due process and shall constitute due and sufficient notice to all persons entitled thereto. The Court further orders the Settlement Administrator to mail the Notice Packet in English and Spanish by First-Class U.S. mail to all Class Members within fifteen (15) calendar days of receipt of the Class Data, pursuant to the terms set forth in the Agreement.

13. Class Members will be bound by the Agreement unless they submit a timely and valid written request to be excluded from the Settlement addressed to the Settlement Administrator, postmarked no later than 45 days following mailing of the Notice, or as possibly extended up to 14 additional days. (Settlement, ¶¶ 11, 34(c).) The Settlement Administrator shall send the copies of the exclusion forms to the counsel for Parties.

14. The parties' proposed notice plan is constitutionally sound because individual notices will be mailed to all Class Members whose identities are known to the parties, and such notice is the best notice practicable. The parties' proposed Class Notice, attached to this order as Exhibit 1, is sufficient to inform Class Members of the terms of the Settlement, their rights under the settlement, their rights to object to the Settlement, their right to receive a payment under the settlement or elect not to participate in the settlement, and the processes for doing so, and the date and location of the final approval hearing and are therefore approved.

15. The Court hereby preliminarily approves the proposed procedure, set forth in the Settlement, for seeking exclusion from the Class Settlement. Any Class Member may choose to be excluded from the Class Settlement by submitting an Exclusion Form or written letter indicating a request to be excluded from the Class Settlement (both of which are referred to as a "Request for Exclusion") in conformity with the requirements set forth in the Class Notice, to the Settlement Administrator, postmarked or delivered on or before the date which is forty-five (45) calendar days from the initial mailing of the Notice Packet ("Response Deadline"), or, in the case of a remailed Notice Packet, the Response Deadline will be extended fifteen (15) calendar days from the initial Response Deadline. Any such person who timely and validly chooses to opt out of, and be excluded from, the Class Settlement will not be entitled to an Individual Settlement Payment and will not be bound by the Class Settlement or have any right to object, appeal, or comment thereon. However, all hourly-paid or non-exempt employees of Defendant in California from April 3, 2022 until May 12, 2024 ("PAGA

Members”) will be bound to the PAGA Settlement and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. See *Arias v. Superior Court* (2009) 46 Cal.4th 986. Class Members who have not submitted a valid and timely Request for Exclusion (i.e., Settlement Class Members) shall be bound by the Agreement and any final judgment based thereon.

16. To object to the Class Settlement, a Settlement Class Member must submit an Objection Form or written objection to the Class Settlement (both of which are referred to as a “Notice of Objection”) to the Settlement Administrator, postmarked or delivered on or before the Response Deadline. The Notice of Objection must be signed and must contain the information that is required, as set forth in the Class Notice, including and not limited to the grounds for the objection. The Settlement Administrator shall send the copies of the objection forms to the counsel for Parties.

17. A final approval hearing will be held on **November 4, 2024, at 8:30a.m.**, in Department 1 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, California 92501, to determine whether the settlement should be granted final approval as fair, reasonable, and adequate as to the Class Members. At that time, the Court will hear all evidence and arguments necessary to evaluate the Settlement. Class Members and their counsel may support or oppose the Settlement, if they so desire, in accordance with the procedures set forth in the Class Notice and this Order. The parties’ counsel and Class Members may appear at the final approval hearing remotely via videoconference using Zoom platform.

18. Class Counsel shall file a Motion for Final Approval, including any request for an award of Attorneys’ Fees and Costs, Service Payment to Plaintiff and Settlement Administration Fees, not later than October 11, 2024 or 16 court days prior to the final approval hearing. In conjunction with the filing of the final approval motion, a declaration from the Settlement Administrator on the outcome of the notice process and authentication of a copy of every exclusion and objection form received by the Settlement Administrator shall be filed with the Court. At that time, the Parties shall also file responses to any written objections received by the Settlement Administrator by the Response Deadline.

19. As set forth in the Class Notice, any Class Member may appear at the final approval hearing in person or remotely via video conference or by his or her own attorney and show cause why the Court should not approve the settlement.

1 20. The Settlement is not a concession or admission and shall not be used against Defendant
2 as an admission or indication with respect to any claim of any fault or omission by Defendant. Whether
3 or not the Settlement is finally approved, neither the Settlement, nor any document, statement,
4 proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be
5 construed as, offered or admitted into evidence as, received as or deemed to be in evidence for any
6 purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession,
7 indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or
8 damage, except for legal proceedings concerning the implementation, interpretation, or enforcement of
9 the Settlement.

10 21. In the event the Settlement does not become effective in accordance with the terms of the
11 Agreement, or the Settlement is not finally approved, or is terminated, cancelled or fails to become
12 effective for any reason, this Order shall be rendered null and void, shall be vacated, and the Parties shall
13 revert back to their respective positions as of before entering into the Agreement.

14 22. The Court reserves the right to continue the date of the final approval hearing without
15 further notice to Class Members. However, the Settlement Administrator shall give notice to any
16 objecting party of any continuance of the Final Approval Hearing.

17 23. The Court retains jurisdiction to consider all further applications arising out of or in
18 connection with the settlement.

19
20 **IT IS SO ORDERED.**

21
22 Dated: _____

Hon. Harold W. Hopp
RIVERSIDE COUNTY SUPERIOR COURT JUDGE