

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com

Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com

Arman A. Salehi (SBN 351112)
asalehi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

FERNANDO ARCE, individually, on behalf of
all others similarly situated, and on behalf of the
State of California and other aggrieved persons,

Plaintiff,

v.

SAMMY'S WOODFIRED PIZZA, a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2023-00037670-CU-OE-CTL

CLASS & REPRESENTATIVE ACTION

[Assigned for all purposes to: Hon. Blaine K.
Bowman, Dept. C-74]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; and the Declaration of
Justin F. Marquez]

PRELIMINARY APPROVAL HEARING

Date: September 13, 2024

Time: 8:30 a.m.

Dept: C-74

Complaint filed: August 30, 2023

FAC filed: August 12, 2024

Trial date: Not set

1 The Court has before it Plaintiff Fernando Arce's ("Plaintiff") Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declaration of Justin F. Marquez, the Class Action and PAGA
4 Settlement Agreement (which is referred to here as the "Settlement Agreement"), and good
5 cause appearing, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
7 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
8 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
9 the terms set forth in the Settlement Agreement between Plaintiff and Defendant Sammy's
10 Woodfired Pizza ("Defendant," and together with Plaintiff, the "Parties"), attached to the
11 Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Preliminary Approval of
12 Class Action Settlement as Exhibit 1.

13 2. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court, and appears to be presumptively valid,
15 subject only to any objections that may be raised at the Final Approval Hearing and final
16 approval by this Court. The Court notes that Defendant has agreed to create a common fund of
17 \$425,000.00 to cover (a) settlement payments to class members who do not validly opt out; (b)
18 a \$10,000.00 payment to the State of California, Labor & Workforce Development Agency
19 ("LWDA") for its share of the settlement of claims for penalties under the Private Attorneys
20 General Act ("PAGA"), 75% of which (\$7,500.00) will be paid to the LWDA and 25%
21 (\$2,500.00) will be paid to eligible Aggrieved Employees; (c) Class Representative service
22 payment of up to \$10,000.00 for Plaintiff; (d) Class Counsel's attorneys' fees, not to exceed
23 35% of the Gross Settlement Amount (\$148,750.00), and up to \$30,000.00 in costs for actual
24 litigation expenses incurred by Class Counsel; and (e) Settlement Administration Costs of up to
25 \$8,990.00.

26 3. The Court preliminarily finds that the terms of the Settlement appear to be within
27 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
28 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair

1 and reasonable to the class members when balanced against the probable outcome of further
2 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
3 significant informal discovery, investigation, research, and litigation have been conducted such
4 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
5 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
6 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
7 the result of intensive, serious, and non-collusive negotiations between the Parties with the
8 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
9 that the Settlement Agreement was entered into in good faith.

10 4. A final fairness hearing on the question of whether the proposed settlement,
11 attorneys' fees and costs to Class Counsel, payment to the LWDA for its share of the settlement
12 of claims for penalties under the PAGA, and the class representative's enhancement award
13 should be finally approved as fair, reasonable and adequate as to the members of the class is
14 hereby set in accordance with the Implementation Schedule set forth below.

15 5. The Court provisionally certifies for settlement purposes only the following class
16 (the "Settlement Class"): "all current and former employees of Defendant in the State of
17 California who worked in a non-exempt capacity at any time during the Class Period and who
18 did not sign an arbitration agreement with Defendant."

19 6. "Class Period" means the period from August 30, 2019 to March 25, 2024.

20 7. The Court finds, for settlement purposes only, that the Settlement Class meets the
21 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
22 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
23 of law and fact that are common, or of general interest, to all Settlement Class Members, which
24 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
25 Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and adequately protect
26 the interests of the Settlement Class Members; and (5) a class action is superior to other
27 available methods for the fair and efficient adjudication of the controversy.

28 8. The Court appoints as Class Representative, for settlement purposes only,

Plaintiff Fernando Arce. The Court further preliminarily approves Plaintiff's ability to request an incentive award up to \$10,000.00.

9. The Court appoints, for settlement purposes only, Justin F. Marquez, Arrash T. Fattahi, and Arman A. Salehi of Wilshire Law Firm, PLC as Class Counsel. The Court further preliminarily approves Class Counsel's ability to request attorneys' fees of up to 35% of the Total Settlement Amount (\$148,750.00), and costs not to exceed \$30,000.00.

10. The Court appoints Apex Class Action Administrators as the Settlement Administrator with reasonable administration costs estimated not to exceed \$8,990.00.

11. The Court approves, as to form and content the Class Notice, attached to the Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the Notice to Settlement Class Members satisfies due process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

12. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

13. Any class member who does not timely and validly request exclusion from the settlement may object to the Settlement Agreement.

14. The Court orders the following Implementation Schedule:

Defendant to provide Class List to the Settlement Administrator	No later than 15 days after the Court's order granting Motion for Preliminary Approval
Settlement Administrator to mail the Notice	No later than 14 days after receipt of the Class List from Defendant
Response Deadline	45 days after Notice is mailed out by the Settlement Administrator
Deadline to file Motion for Final Approval, Request for Attorneys' Fees and Costs, and Service Award to Plaintiff	16 court days before the hearing on Plaintiff's Motion for Final Approval, which is _____;

1
2
3 Final Approval Hearing
4
5

_____ at _____ a.m./p.m., or
first available date thereafter, in Department
C-74. The hearing may be continued to
another date without further notice to the
Class Members.

6 15. The Court further ORDERS that, pending further order of this Court, all proceedings
7 in this lawsuit, except those contemplated herein and in the settlement, are stayed.

8 **IT IS SO ORDERED.**

9
10 DATE:

Hon. Blaine K. Bowman
San Diego County Superior Court

Arce v. Sammy's Woodfired Pizza, et al.
37-2023-00037670-CU-OE-CTL

i
PROOF OF SERVICE