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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALBERTO SORIANO NARCISCO, an individual, and on behalf of all others similarly situated,

Plaintiff,

v.

O'TASTY FOODS INC., a California stock corporation; SOUTH BAY SAFETY INC, a California stock corporation; SANDRA ROMERO, an individual, and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 23STCV23826

[Assigned for all purposes to the Hon. Theresa M. Traber in Dept. 1]

[PROPOSED] **ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY**

This Court, having considered the Motion of plaintiff Alberto Soriano Narciso ("Plaintiff") for Preliminary Approval of Class and Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only ("Motion for Preliminary Approval"), the Declarations of Keaton D. Mendoza, David D. Bibiyan, Alberto Soriano Narciso, and Jodey Lawrence, the Class and PAGA Settlement Agreement ("Settlement," "Agreement" or "Settlement Agreement"), the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice"), and other documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

1. The definitions set out in the Settlement Agreement are incorporated by reference into this Order; all terms defined therein shall have the same meaning in this Order.

2. The Court certifies the following settlement class ("Settlement Class," "Settlement Class Members," "Class Members") for the purpose of settlement only: all persons currently or formerly employed by defendant O'Tasty Foods, Inc. ("Defendant O'Tasty"), either directly or placed by defendant South Bay Safety, Inc. ("Defendant South Bay"), to work for Defendant O'Tasty, as non-exempt, hourly-paid employees during the Class Period in the State of California. "Class Period" means the period from September 29, 2019, through April 04, 2026 for Defendant O'Tasty. The "Class Period" for Defendant South Bay is September 29, 2019 through September 30, 2022 as Defendant South Bay closed its doors and stopped doing business on Friday, September 30, 2022.

3. The Court preliminarily appoints the named plaintiff Alberto Soriano Narciso as Class Representative, and David D. Bibiyan and Sarah Cohen of Bibiyan Law Group, P.C., as Class Counsel.

4. The Court preliminarily approves the proposed class settlement upon the terms and conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the settlement appears to be within the range of reasonableness of settlement that could ultimately be given final approval by the Court. It appears to the Court on a preliminary basis that the settlement amount is fair, adequate, and reasonable as to all potential class members when balanced against the probable outcome of further litigation relating to liability and damages issues. It further appears that

extensive and costly investigation and research have been conducted such that counsel for the parties at this time are reasonably able to evaluate their respective positions. It further appears to the Court that the settlement at this time will avoid substantial additional costs to all parties, as well as the delay and risks that would be presented by the further prosecution of the Action. It further appears that the settlement has been reached as the result of intensive, non-collusive and arms-length negotiations utilizing an experienced third-party neutral.

5. The Court approves, as to form and content, the Class Notice that has been submitted herewith.

6. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to the Class Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies with the requirements of law and appears to be the best notice practicable under the circumstances.

7. The Court hereby preliminarily approves the definition and disposition of the Gross Settlement Amount of $900,000.00, which is inclusive of: attorneys' fees of up to one third (1/3) of the Gross Settlement Amount, which, if not escalated pursuant to the Agreement, amounts to $300,000.00, in addition to actual costs incurred of up to $30,000.00; service award of up to $10,000.00 to Plaintiff; costs of settlement administration of no more than $8,500.00 and Private Attorneys General Act of 2004 ("PAGA") penalties in the amount of $100,000.00, of which $75,000.00 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA") and $25,000.00 (25%) to Aggrieved Employees.

8. Defendant O'Tasty shall fund $650,000.00 of the Gross Settlement Amount and Defendant South Bay shall fund $250,000.00 of the Gross Settlement Amount.

9. "Aggrieved Employees" means all persons currently or formerly employed by Defendant O'Tasty, directly as non-exempt, hourly-paid employees during the period from September 29, 2022 through the end of the Class Period ("PAGA Period") in the State of California. Defendant South Bay Safety, Inc. is not part of the PAGA claim and is not a Defendant in the relevant operative complaint as to the PAGA cause of action.

10. The Gross Settlement Amount expressly excludes Employer's Taxes, which will be

paid separately and apart by Defendants on the wages portion of the Gross Settlement Amount.

11. Class Member's "Workweek" shall mean any week during which a Class Member worked for Defendants, for at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

12. Defendants represent that there are no more than 40,000 Workweeks during the Class Period. In the event the number of Workweeks during the Class Period increases by more than 10%, or 4,000 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 44,000 multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the Gross Settlement Amount by 40,000. The Parties agree that the Workweek Value amounts to $22.50 per workweek ($900,000 / 40,000 workweeks). Thus, for example, should there be 45,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by $22,500. (45,000 Workweeks – 44,000 Workweeks x $22.50/ Workweek.).

13. The Court deems Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"), the settlement administrator, and preliminarily approves payment of administrative costs, not to exceed $8,500.00 out of the Gross Settlement Amount for services to be rendered by Phoenix on behalf of the class.

14. Not later than 20 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. "Class Data" means Class Member identifying information in Defendants' custody, possession, or control, including the Class Member's (1) name; (2) last known address(es); (3) last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

15. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under the Agreement.

16. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

17. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to the Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts.

18. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

19. Before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under the Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List.

20. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely postmarked by the Response Deadline.

21. Every Class Member who does not submit a timely and valid Request for Exclusion

is deemed to be a Participating Class Member under the Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of the Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

22. Only Participating Class Members may object to the class action components of the Settlement and/or the Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Participating Class Members may send written objections to the Administrator, by mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re mailed).

23. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control, and the Objection will be overruled.

24. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via mail.

25. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than sixty-five (65) calendar days after the Effective Date.

26. Within 7 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment

and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments, and the Individual PAGA Payments.

27. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California State Controller, Unclaimed Property Fund.

28. All papers filed in support of final approval, including supporting documents for attorneys' fees and costs, shall be filed by _____.

29. A Final Approval Hearing shall be held with the Court on _____ at _____ in Department 1 of the above-entitled Court to determine: (1) whether the proposed settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service award to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

IT IS SO ORDERED.

Dated: _____

_____
Judge of the Superior Court