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on behalf of himself and all others similarly situated

7 and aggrieved

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11
12 STUART MICHAEL POPKIN, an individual
and on behalf of all others similarly situated,

13
14 Plaintiff,

15 v.

16 BREVILLE USA, INC., a California
17 corporation; and DOES 1 through 100,
inclusive,

18
19 Defendants.
20

CASE NO.: 23STCV27090

[Related Case No. 24STCV00250]

[Assigned to the Hon. David S. Cunningham
III in Department 11]

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

1 This Court, having considered the Motion of plaintiff Stuart Michael Popkin (“Plaintiff”) for
2 Preliminary Approval of Class and Representative Action Settlement and Provisional Class
3 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations
4 of Vedang J. Patel, David D. Bibiyan, Stuart Michael Popkin and Jodey Lawrence, the Class and
5 PAGA Action Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”), the
6 proposed Notice of Proposed Class Action Settlement and Date for Final Approval Hearing (“Class
7 Notice”), and other documents submitted in support of the Motion for Preliminary Approval, hereby

8 **ORDERS, ADJUDGES AND DECREES THAT:**

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

11 2. The Court certifies the following settlement class (“Settlement Class,” “Settlement
12 Class Members,” “Class Members”) for the purpose of settlement only: all persons currently or
13 formerly employed by Defendant Breville USA, Inc. (“Defendant”) as non-exempt, hourly-paid
14 employees in the State of California during the period from November 3, 2019 through the date of
15 Preliminary Approval (“Class Period”).

16 3. The Court preliminarily appoints the named plaintiff Stuart Michael Popkin
17 (“Plaintiff”) as Class Representative, and David D. Bibiyan, and Vedang J. Patel of Bibiyan Law
18 Group, P.C., as Class Counsel.

19 4. The Court preliminarily approves the proposed class settlement upon the terms and
20 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
21 settlement appears to be within the range of reasonableness of settlement that could ultimately be
22 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
23 amount is fair, adequate, and reasonable, as to all potential class members when balanced against
24 the probable outcome of further litigation relating to liability and damages issues. It further appears
25 that extensive and costly investigation and research has been conducted such that counsel for the
26 parties at this time are reasonably able to evaluate their respective positions. It further appears to the
27 Court that the settlement at this time will avoid substantial additional costs to all parties, as well as
28 the delay and risks that would be presented by the further prosecution of the Action. It further

1 appears that the settlement has been reached as the result of intensive, non-collusive and arms-length
2 negotiations utilizing an experienced third-party neutral.

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

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

9 7. The Court hereby preliminarily approves the definition and disposition of the Gross
10 Settlement Amount of \$342,250.00, which is inclusive of: attorneys' fees of up to thirty-five percent
11 (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Agreement, amounts
12 to \$119,875.00, in addition to actual costs incurred of up to \$30,000.00; service award of up to
13 \$7,500.00 to Plaintiff; costs of settlement administration of no more than \$20,000.00 and Private
14 Attorneys General Act of 2004 ("PAGA") penalties in the amount of \$34,200.00, of which
15 \$25,650.00 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA") and
16 \$8,550.00 (25%) to "Aggrieved Employees," defined as all persons currently or formerly employed
17 by Defendant Breville USA, Inc. ("Defendant") as non-exempt, hourly-paid employees in the State
18 of California during the period from November 3, 2022 through the end of the Class Period ("PAGA
19 Period").

20 8. The Gross Settlement Amount expressly excludes Employer's Share of Payroll
21 Taxes, which will be paid separately and apart by Defendant on the wages portion of the Gross
22 Settlement Amount.

23 9. Class Member's "Workweek" means any week during which a Class Member
24 worked for Defendant at least one day during the Class Period, based on hire date(s), termination
25 date(s), and re-hire date(s).

26 10. Defendant estimates that, as of the date of mediation, Class Members worked 13,827
27 workweeks during the Class Period. In the event the number of workweeks during the Class Period
28 increases by more than 10%, or 1,383 workweeks, then Defendant shall have the option to either

1 end the Class Period as of the date that the workweeks reach 15,210 or increase the GSA on a
2 proportional basis equal to the percentage increase in the workweeks above 10% (i.e., if there is a
3 12% increase in the number of workweeks during the Settlement Class Period, Defendant has the
4 option to increase the GSA by 2% to cover the entire Class Period). The workweek value shall be
5 calculated by dividing the GSA by 13,827. The Parties agree that the workweek value amounts to
6 \$25.00 per workweek ($\$342,250 / 13,827$ workweeks).

7 11. The Court deems Phoenix Settlement Administrators (“Phoenix” or “Settlement
8 Administrator”), the settlement administrator, and preliminarily approves payment of administrative
9 costs, not to exceed \$7,250.00 out of the Gross Settlement Amount for services to be rendered by
10 Phoenix on behalf of the class.

11 12. Not later than thirty (30) days after the Court grants Preliminary Approval of the
12 Settlement, Defendant will deliver the Class Data to the Administrator in the form of a Microsoft
13 Excel spreadsheet. “Class Data” means Class Member’s identifying information in Defendant’s
14 possession including the Class Member’s name, last-known mailing address, Social Security
15 number, hire dates, termination dates (as applicable) and re-hire dates (as applicable).

16 13. To protect Class Members’ privacy rights, the Administrator must maintain the Class
17 Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose,
18 and restrict access to the Class Data to Administrator’s employees who need access to the Class
19 Data to effect and perform under this Agreement.

20 14. Before mailing Class Notices, the Administrator shall update Class Members’ addresses
21 using the National Change of Address database.

22 15. Using best efforts to perform as soon as possible, and in no event later than fourteen
23 (14) days after receiving the Class Data, the Administrator will send to all Class Members identified
24 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, with
25 Spanish translation, substantially in the form attached to this Agreement as Exhibit “A.”

26 16. “Response Deadline” means forty-five (45) days after the Administrator mails Notice
27 to Class Members and Aggrieved Employees and shall be the last date on which Class Members
28 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the

1 Settlement. Class Members to whom Notice Packets are resent after having been returned
2 undeliverable to the Administrator shall have an additional fifteen (15) days beyond the Response
3 Deadline has expired.

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

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

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

23 20. Only Participating Class Members may object to the class action components of the
24 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
25 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
26 and/or Class Representative Service Payment. Participating Class Members may send written
27 objections to the Administrator by mail. In the alternative, Participating Class Members may appear
28 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval

1 Hearing. A Participating Class Member who elects to send a written objection to the Administrator
2 must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an
3 additional 15 days for Class Members whose Class Notice was re-mailed).

4 21. If a Settlement Class Member submits an Objection and a Request for Exclusion, the
5 Request for Exclusion will control, and the Objection will be disregarded.

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

11 23. Defendant shall fully fund the Gross Settlement Amount and also fund the amounts
12 necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the
13 Administrator no later than fourteen (14) days after the Effective Date.

14 24. Payments from the Gross Settlement Amount. Within fourteen (14) days after
15 Defendant fund the Gross Settlement Amount, the Administrator will mail checks for all Individual
16 Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
17 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
18 Payment and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
19 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
20 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
21 Payments.

22 25. For any Class Member whose Individual Class Payment check or Individual PAGA
23 Payment check is uncashed and cancelled after the void date (i.e., 180 days after the date of mailing)
24 the Administrator shall transmit the funds represented by such checks to the California Controller's
25 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
26 subject to the requirements of California Code of Civil Procedure Section 384.

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

1 27. A Final Approval Hearing shall be held with the Court on _____
2 at ____:____.m in Department 11 of the above-entitled Court to determine: (1) whether the proposed
3 settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the
4 amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service award
5 to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the
6 amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

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8 **IT IS SO ORDERED.**

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10 Dated: _____

Judge of the Superior Court

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