

1 **BIBIYAN LAW GROUP, P.C.**

Vedang J. Patel (SBN 328647)

2 *vedang@tomorrowlaw.com*

3 Keaton D. Mendoza

Kmendoza@tomorrowlaw.com

4 1460 Westwood Boulevard

Los Angeles, California 90024

5 Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, DERICK ANTHONY BUTLER,
on behalf of himself and all others similarly situated
7 and aggrieved

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

9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

11 DERICK ANTHONY BUTLER, an individual
12 and on behalf of all others similarly situated,

13
14 Plaintiff,

15 v.

16 SEE’S CANDY SHOPS INCORPORATED, a
17 California Corporation; and DOES 1 through
100, inclusive,

18
19 Defendant.

CASE NO.: 24STCV09521

[Assigned to the Hon. Samantha P. Jessner in
Dept. 7]

**[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 Derick Anthony Butler (“Plaintiff”)
2 for 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, Derick Anthony Butler, and Sean Hartranft 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 employed by
13 defendant See’s Candy Shops Incorporated (“Defendant”) in California and classified as a non-
14 exempt, hourly-paid employee who worked as call center employees for Defendant during the period
15 from April 16, 2020 through October 31, 2025 (“Class Period”).

16 3. The Court preliminarily appoints the named plaintiff Derick Anthony Butler
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 the
24 probable outcome of further litigation relating to liability and damages issues. It further appears that
25 extensive and costly investigation and research has been conducted such that counsel for the parties
26 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
27 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
28 delay and risks that would be presented by the further prosecution of the Action. It further appears

1 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. “Aggrieved Employees” means all persons employed by Defendant in California and
10 classified as a non-exempt, hourly-paid employee who worked for Defendant during from April 16,
11 2023 through the end of Class Period (“PAGA Period”).

12 8. The Court hereby preliminarily approves the definition and disposition of the Gross
13 Settlement Amount of \$695,000.00, which is inclusive of: attorneys’ fees of up to thirty-five percent
14 (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Agreement, amounts
15 to \$243,250.00, in addition to actual costs incurred of up to \$30,000.00; service award of up to
16 \$10,000.00 to Plaintiff; costs of settlement administration of no more than \$11,450.00 and Private
17 Attorneys General Act of 2004 (“PAGA”) penalties in the amount of \$70,000.00, of which
18 \$52,500.00 (75%) will be paid to the Labor and Workforce Development Agency (“LWDA”) and
19 \$17,500.50 (25%) to the Aggrieved Employees.

20 9. 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 10. Class Member’s “Workweek” shall mean any week during which a Class Member
24 worked for Defendant, for at least one day during the Class Period, based on hire dates, re-hire dates
25 (as applicable), and termination dates (as applicable).

26 11. The Settlement is based on Defendant’s representation that there were 25,860
27 Workweeks during the Class Period. If the actual number of Workweeks worked by Class Members
28 during the Class Period exceeds the Baseline Workweeks by more than ten percent (10%)—i.e.,

1 2,586 Workweeks—then the Gross Settlement Amount shall increase by the same percentage that
2 the actual Workweeks exceed the Baseline Workweeks above ten percent (10%) should Defendant
3 elect to end the Class Period on October 31, 2025, and not on the date by which 28,446 Workweeks
4 were worked. For the avoidance of doubt, if actual Workweeks reflect an 11% increase over the
5 Baseline, the Gross Settlement Amount increases by 1%; if the increase is 12.5%, the Gross
6 Settlement Amount increases by 2.5%, etc. For example: If actual Workweeks total 29,000, that is
7 a 12.1423% increase over 25,860. The portion above 10% is 2.1423%, so the Gross Settlement
8 Amount increases by 2.1423% of \$695,000 = \$14,888.99, for a total Gross Settlement Amount of
9 \$709,888.99. No increase applies at or below a 10% increase in Workweeks.

10 12. The Court deems Apex Class Action, LLC (“Apex”), the settlement administrator,
11 and preliminarily approves payment of administrative costs, not to exceed \$11,450.00 out of the
12 Gross Settlement Amount for services to be rendered by Apex on behalf of the class.

13 13. Not later than 7 business days after the Court grants Preliminary Approval of the
14 Settlement, Defendant will deliver the Class Data to the Administrator in the form of a Microsoft
15 Excel spreadsheet. “Class Data” means Class Member identifying information in Defendant’s
16 custody, possession, or control, including the Class Member’s (1) name; (2) last known address(es);
17 (3) last known telephone number(s); (4) last known Social Security Number(s); and (5) the number
18 of Workweeks and PAGA Pay Periods, the accuracy of which will be certified in a declaration
19 signed by a member of Defendant’s payroll department provided to the Administrator.

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

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

28 16. Before the date by which Plaintiff is required to file the Motion for Final Approval

1 of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed
2 declaration suitable for filing in Court attesting to its due diligence and compliance with all of its
3 obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class
4 Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members,
5 the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
6 number of written objections and attach the Exclusion List.

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

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

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

28 20. If a Settlement Class Member submits an Objection and a Request for Exclusion, the

Request for Exclusion will control, and the Objection will be disregarded.

21. 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.

22. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

23. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (i.e., 180 days after the date of mailing) the Administrator shall transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid at Work.

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

25. A Final Approval Hearing shall be held with the Court on _____ at ____:____.m in Department 7 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