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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JULIO C. HERNANDEZ, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BREAKFAST CLUB LLC, a California limited
liability company, and DOES 1-50, Inclusive,

Defendants.

Case No. CVRI2203757

**~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL AND JUDGMENT**

Date: May 30, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class and
2 PAGA Action Claims and Release of Claims ("Agreement"), attached as Exhibit "1" to the
3 Declaration of Jean-Claude Lapuyade, Esq, in support of Plaintiff's Motion for Final Approval of
4 Class Action and PAGA Settlement filed on May 7, 2024, and Motion for Class Counsel Award and
5 Class Representative Service Award duly came on for hearing on May 30, 2024, before the above-
6 entitled Court. Zakay Law Group, APLC and the JCL Law Firm, APC appeared on behalf of
7 Plaintiff JULIO C. HERNANDEZ ("Plaintiff"). Rosenstein & Associates appeared on behalf of
8 Defendant BREAKFAST CLUB LLC (hereinafter "Defendant").

9 **I.**

10 **FINDINGS**

11 Based on the oral and written argument and evidence presented in connection with the
12 motion, the Court makes the following findings:

13 1. All capitalized terms used herein shall have the same meaning as defined in
14 the Agreement.

15 2. This Court has jurisdiction over the subject matter of this litigation pending
16 in the California Superior Court for the County of Riverside ("Court"), Case No. CVRI2203757,
17 entitled *Hernandez v. Breakfast Club LLC*, and over all Parties to this litigation, including the Class.

18 **Preliminary Approval of the Settlement**

19 3. On February 5, 2024, the Court granted preliminary approval of a class-wide
20 settlement. At this same time, the court approved certification of a provisional settlement class for
21 settlement purposes only. The Court confirms this Order and finally approves the settlement and
22 the certification of the Class.

23 **Notice to the Class**

24 4. In compliance with the Preliminary Approval Order, the Notice Packet was
25 mailed by first class mail to the Class Members at their last known addresses on April 2, 2024.
26 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
27 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
28

1 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
2 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

3 5. The Response Deadline for opting out or objecting was May 17, 2024. There
4 was an adequate interval between notice and deadline to permit Class Members to choose what to
5 do and act on their decision. No Class Members objected. No Class Members requested exclusion.
6 100% of the Class Members will be participating in the Settlement and will be sent Individual
7 Settlement Payments.

8 **Fairness Of the Settlement**

9 6. The Agreement provides for a Gross Settlement Amount of \$225,000.00.
10 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
11 Cal.App.4th 1794, 1801.)

12 a. The settlement was reached through arms-length bargaining between
13 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
14 settlement.

15 b. The Parties' investigation and discovery have been sufficient to allow
16 the Court and counsel to act intelligently.

17 c. Counsel for all parties are experienced in similar employment class
18 action litigation and have previously settled similar class claims on behalf of employees claiming
19 compensation. All counsel recommended approval of the Settlement.

20 d. The percentage of objectors and requests for exclusion is small. No
21 objections were received. No requests for exclusion were received.

22 e. The participation rate is high. 100% of Class Members will be
23 participating in the Settlement and will be sent settlement payments.

24 7. The consideration to be given to the Class Members under the terms of the
25 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
26 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
27 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
28 litigation and the delays which would ensue from continued prosecution of the Action.

1 8. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Settlement Class Members.

3 **Attorneys' Fees and Litigation Expenses**

4 9. The Agreement provides for a Class Counsel Award in the amount of up to
5 Eighty-Seven Thousand Dollars and Zero Cents (\$87,000.00). Subject to Court approval, the Class
6 Counsel Award consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount,
7 or Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) and reimbursement of costs and
8 expenses in the amount of Twelve Thousand Dollars and Zero Cents (\$12,000.00).

9 10. A Class Counsel Award of Eighty-Seven Thousand Dollars and Zero Cents
10 (\$87,000.00) comprised of attorneys' fees in the amount of Seventy-Five Thousand Dollars and
11 Zero Cents (\$75,000.00) and reimbursement of actually incurred costs and expenses in the amount
12 of Twelve Thousand Dollars and Zero Cents (\$12,000.00) is reasonable in light of the contingent
13 nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class
14 Counsel. The requested attorneys' fee award represents 1/3 of the common fund, which is
15 reasonable and at the low end of the range for fee awards in common fund cases and is supported
16 by Class Counsel's lodestar.

17 **Class Representative Service Award**

18 11. The Agreement provides for a Class Representative Service Award of Ten
19 Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, subject to the Court's approval. The
20 Court finds that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff is
21 reasonable in light of the risks and burdens undertaken by the Plaintiff in this class action litigation.

22 **Settlement Administration Costs**

23 12. The Agreement provides for Settlement Administration Costs to be paid in
24 an amount not to exceed \$5,765.00. The Declaration of the Settlement Administrator provides that
25 the actual claims administration expenses were \$5,765.00. The amount of this payment is
26 reasonable in light of the work performed by the Settlement Administrator.

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1 II.
2 **ORDERS**

3 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

4 1. The Class is certified for the purposes of settlement only. The Settlement
5 Class is hereby defined to include all non-exempt employees who are or previously were employed
6 by Defendant and performed work in California ("Class") during the period from September 2, 2018
7 to July 28, 2023 ("Class Period").

8 2. Every person in the Class who did not submit and timely and validly Request
9 for Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the
10 Settlement Administrator, that none of the Class Members opted-out of the Settlement.

11 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
12 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
13 this Order and the terms of the Agreement.

14 4. Any envelope transmitting a settlement distribution to a Class Member shall
15 bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." Any
16 checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and
17 negotiable for one hundred and eighty (180) days from the date of their issuance. The administrator
18 shall mail a reminder postcard to any Class Member whose settlement distribution check has not
19 been negotiated within 60 days after the date of mailing. If (i) any of the Class Members are current
20 employees of Defendant, (ii) the distribution mailed to those employees is returned to the Settlement
21 Administrator as being undeliverable, and (iii) the Settlement Administrator is unable to locate a
22 valid mailing address, the Settlement Administrator shall arrange with Defendant to have those
23 distributions delivered to the employees at their place of employment. In the event an Individual
24 Settlement Payment and/or Aggrieved Employee's individual share of the PAGA Settlement check
25 has not been cashed within 180 days, the check will be voided and the funds from any such uncashed
26 checks will be directed and escheat to the State Controller's Office Unclaimed Property Division in
27 the name of the Class Member or Aggrieved Employee.

1 5. Class Counsel are awarded attorneys' fees in the amount Eighty-Seven
2 Thousand Dollars and Zero Cents (\$87,000.00) for the Class Counsel Award comprised of one-third
3 of the Gross Settlement Amount, or Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00)
4 and litigation expenses in the amount of Twelve Thousand Dollars and Zero Cents (\$12,000.00).
5 The awarded fees will be paid as follows: Thirty-Seven Thousand Five Hundred Dollars and Zero
6 Cents (\$37,500.00) to JCL Law Firm, APC and Thirty-Seven Thousand Five Hundred Dollars and
7 Zero Cents (\$37,500.00) to Zakay Law Group, APLC. The awarded litigation expenses shall be paid
8 as follows: Five Thousand Three Hundred Thirty-Nine Dollars and Fifty-Five Cents (\$5,339.55) to
9 JCL Law Firm, APC and Six Thousand Six Hundred Sixty Dollars and Forty-Five Cents (\$6,660.45)
10 to Zakay Law Group, APLC. Class Counsel shall not seek or obtain any other compensation or
11 reimbursement from Defendant, Plaintiff, or members of the Class.

12 6. The payment of the Class Representative Service Award to Plaintiff in the
13 amount of \$10,000.00 is approved.

14 7. The payment of \$5,765.00 to the Settlement Administrator for Settlement
15 Administration Costs is approved.

16 8. The PAGA Settlement of \$10,000.00 is hereby approved as fair, reasonable,
17 adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds
18 that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of any fraud
19 or collusion.

20 9. Final Judgment is hereby entered in this action. The Final Judgment shall
21 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
22 of Defendant from all class claims which are alleged in the operative complaint, or could have been
23 alleged based upon the facts in the operative complaint, which occurred during the Class Period,
24 and expressly excluding all other claims, including claims for vested benefits, wrongful termination,
25 unemployment insurance, disability, social security, workers' compensation, and class claims
26 outside of the Class Period.

27 10. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
28 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys'

1 General Act (“PAGA”) and shall release Defendant from all claims for statutory penalties that could
2 have been sought by the Labor Commissioner for the violations identified in Plaintiffs prefiling
3 letter to the LWDA; Plaintiff does not release any aggrieved employee's claim for wages or
4 damages.

5 11. The term “Aggrieved Employees” is hereby defined as all non-exempt
6 employees who are or previously were employed by Defendant and performed work in California
7 during the PAGA Period. The PAGA Period means the period between June 29, 2021 until July 28,
8 2023.

9 12. In addition to the release given by each Settlement Class Member, Plaintiff
10 also generally releases Defendant from any and all claims as set forth in the General Release by
11 Plaintiff in the Agreement.

12 13. The Agreement is not an admission by Defendant, nor is this Final Approval
13 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
14 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
15 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
16 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
17 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
18 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
19 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
20 proceeding against Defendant by Plaintiff or vice versa in any court, administrative agency or other
21 tribunal for any purpose as an admission whatsoever other than to enforce the provisions of this
22 Final Approval Order and Judgment, the Settlement, or any related agreement or release.
23 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
24 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and records
25 on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral
26 estoppel, release, or other theory of claim or issue preclusion or similar defense as to the claims
27 being released by the Settlement.

1 14. Notice of entry of this Final Approval Order and Judgment shall be given to
2 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
3 of entry of this Final Approval Order and Judgment to individual Class Members and this Final
4 Approval Order and Judgment shall be posted and made available to Class Members on the
5 Settlement Administrator's website as indicated in the Notice Packet.

6 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
7 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
8 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
9 connection with the distribution of settlement benefits.

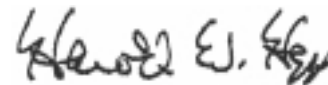
10 16. If the Settlement does not become final and effective in accordance with the
11 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
12 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
13 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

14 17. Plaintiff shall give notice of this Judgment to the Labor and Workforce
15 Development Agency within ten (10) days after entry of the Judgment or order pursuant to
16 California Labor Code section 2699(1)(3).

17 18. A Final Report (Nonappearance) Hearing will be held on **May 30, 2025 at**
18 **8:30 a.m.** Plaintiff will file a report concerning the amount of money distributed on or before **May**
19 **22, 2025.**

20 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO**
21 **ORDERED.**

22 DATED: May 31, 2024

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25 _____
26 Hon. Harold W. Hopp
27 Judge, Superior Court for the State of California,
28 County of Riverside