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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA BARBARA

ROBERT BARAY, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

CURATION FOODS, INC, a Delaware
Corporation; LANDEC CORPORATION, a
Delaware Corporation; and DOES 1 through
50, Inclusive;

Defendants.

Case No. 21CV02834

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: August 29, 2023
Time: 8:30 a.m.

Judge: Hon. James F. Rigali
Dept.: 2

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") and Motion for Class Counsel Award
3 and Class Representative Service Award duly came on for hearing on August 29, 2023, before the
4 above-entitled Court. Zakay Law Group, APLC and the JCL Law Firm, APC appeared on behalf
5 of Plaintiff ROBERT BARAY ("Plaintiff"). Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
6 appeared on behalf of Defendant CURATION FOODS, INC. and Defendant LANDEC
7 CORPORATION (hereinafter "Defendants").

8 **I.**

9 **FINDINGS**

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

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

14 2. This Court has jurisdiction over the subject matter of this litigation pending
15 in the California Superior Court for the County of Santa Barbara ("Court"), Case No. 21CV02834,
16 entitled *Baray v. Curation Foods, Inc., et al.*, and over all Parties to this litigation, including the
17 Class.

18 **Preliminary Approval of the Settlement**

19 3. On February 2, 2023, 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 March 24, 2023.
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
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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 8, 2023. 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 \$495,000.00.
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 zero. 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 One Hundred Eighty-Five Thousand Dollars and Zero Cents (\$185,000.00). Subject to Court
6 approval, the Class Counsel Award consists of attorneys' fees equal to one-third (1/3) of the Gross
7 Settlement Amount, or One Hundred Sixty-Five Thousand Dollars and Zero Cents (\$165,000.00)
8 and reimbursement of costs and expenses in the amount of up to Twenty Thousand Dollars and Zero
9 Cents (\$20,000.00).

10 10. A Class Counsel Award of One Hundred Eighty One Thousand Seven
11 Hundred Eighty Three Dollars and Twenty Four Cents (\$181,783.24) comprised of attorneys' fees
12 in the amount of One Hundred Sixty-Five Thousand Dollars and Zero Cents (\$165,000.00) and
13 reimbursement of actually incurred costs and expenses in the amount of Sixteen Thousand Seven
14 Hundred Eighty Three Dollars and Twenty Four Cents (\$16,783.24) is reasonable in light of the
15 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
16 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common fund,
17 which is reasonable and at the low end of the range for fee awards in common fund cases and is
18 supported by Class Counsel's lodestar.

19 **Class Representative Service Awards**

20 11. The Agreement provides for a Class Representative Service Award of
21 Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00) to Plaintiff, subject to the
22 Court's approval. The Court finds that the amount of Seventeen Thousand Five Hundred Dollars
23 and Zero Cents (\$17,500.00) to Plaintiff is reasonable in light of the risks and burdens undertaken
24 by the Plaintiff in this class action litigation.

25 **Settlement Administration Costs**

26 12. The Agreement provides for Settlement Administration Costs to be paid in
27 an amount not to exceed \$11,000.00. The Declaration of the Settlement Administrator provides that
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1 the actual claims administration expenses were \$7,950.00. The amount of this payment is reasonable
2 in light of the work performed by the Settlement Administrator.

3 **II.**

4 **ORDERS**

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

6 1. The Class is certified for the purposes of settlement only. The Settlement
7 Class is hereby defined to include all persons who are or previously were employed by Defendants
8 in California and classified as non-exempt employees including participating Class Members (a
9 Class Member who does not submit a valid and timely exclusion request from the Settlement) or
10 Non-Participating Class Member (any Class Member who opts out of the Settlement by sending a
11 valid and timely exclusion request) (“Class”) from July 16, 2017 to June 6, 2022 (“Class Period”).

12 2. Every person in the Class who did not submit a timely and valid Request for
13 Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the Settlement
14 Administrator, that no Class Members opted-out of the Settlement.

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

18 4. Class Counsel are awarded attorneys’ fees in the amount One Hundred Eighty
19 One Thousand Seven Hundred Eighty Three Dollars and Twenty Four Cents (\$181,783.24) for the
20 Class Counsel Award comprised of one-third of the Gross Settlement Amount, or One Hundred
21 Sixty-Five Thousand Dollars and Zero Cents (\$165,000.00) and litigation expenses in the amount
22 of Sixteen Thousand Seven Hundred Eighty Three Dollars and Twenty Four Cents (\$16,783.24).
23 Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendants,
24 Plaintiff, or members of the Class.

25 5. The payment of the Class Representative Service Award to Plaintiff in the
26 amount of \$17,500.00 is approved.

27 6. The payment of \$7,950.00 to the Settlement Administrator for Settlement
28 Administration Costs is approved.

1 7. The PAGA Settlement of \$20,000.00 is hereby approved as fair, reasonable,
2 adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds
3 that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of any fraud
4 or collusion.

5 8. Final Judgment is hereby entered in this action. The Final Judgment shall
6 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
7 of Defendants from all claims, demands, rights, liabilities that were pled in any of the complaints in
8 this matter, or which could have been pled in any of the complaints in this matter than arose during
9 the Class Period. As a matter of emphasis but not limitation, the Released Claims shall include: (a)
10 Unfair Competition in Violation of California Business & Professions Code section 17200, et seq.;
11 (b) Failure to Pay Minimum Wages in Violation of California Labor Code section 1194, 1197, and
12 1197.1; (c) Failure to Pay Overtime Wages in Violation of California Labor Code section 510, et
13 seq.; (d) Failure to Provide Required Meal Periods in Violation of California Labor Code sections
14 226.7 and 512; (e) Failure to Provide Required Rest Periods in Violation of California Labor Code
15 sections 226.7 and 512; (f) Failure to Provide Accurate Itemized Wage Statements in Violation of
16 California Labor Code section 226 and 226.2; (g) Failure to Provide Wages When Due in Violation
17 of California Labor Code sections 201, 202, and 203; (h) Released Claims also means any claims,
18 rights, demands, liabilities, damages, wages, benefits, expenses, penalties, debts, obligations,
19 attorneys' fees, costs, any other form of relief or remedy in law, equity, of whatever kind or nature,
20 whether known or unknown, suspected or unsuspected, and causes of action, that could potentially
21 arise from the receipt of any monies as a result of this settlement by any member of the Settlement
22 Class. To the extent employees are required to "opt-in" to have this release be deemed effective
23 under federal law, the acceptance and negotiation of any settlement check shall be deemed effective
24 for that purpose.

25 9. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
26 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys'
27 General Act ("PAGA") and shall release Defendant from all claims for PAGA penalties alleged in
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1 the Action, including, but not limited to, PAGA penalties, unpaid costs or expenses, attorneys' fees,
2 litigation costs.

3 10. The term "Aggrieved Employees" is hereby defined as all of Defendants'
4 current and former non-exempt employees employed in California during the PAGA Period. The
5 PAGA Period means the period between May 12, 2020 to June 6, 2022.

6 11. In addition to the release given by each Settlement Class Member, Plaintiff
7 also generally releases Defendants from any and all claims as set forth in the General Release by
8 Plaintiff in the Agreement.

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

24 13. Notice of entry of this Final Approval Order and Judgment shall be given to
25 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
26 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
27 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
28 in the Notice Packet.

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

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

IT IS SO ORDERED.

DATED: _____, 2023

Hon. James F. Rigali
Judge, Superior Court for the State of California,
County of Santa Barbara