

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Juliann Alvarado (State Bar #3374727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
juliann@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
Sydney Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

Attorneys for Plaintiff

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,

Plaintiffs,

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
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: November 22, 2022

Time: 8:30 a.m.

Judge: Hon. James F. Rigali

Dept.: 2

1 This matter having come before the Honorable Judge James F. Rigali of the Superior Court of
2 the State of California, in and for the County of Santa Barbara, at 8:30 a.m. on November 22, 2022,
3 with Jean-Claude Lapuyade, Esq., of the JCL LAW FIRM, APC, and Shani O. Zakay, Esq. of the
4 ZAKAY LAW GROUP, APLC, as counsel for plaintiff ROBERT BARAY (“Plaintiff”), and David A.
5 Garcia, Esq., and Drake A. Mirsch, Esq., of OGLETREE, DEAKINS, NASH, SMOAK & STEWART,
6 P.C. appearing for defendant CURATION FOODS, INC and defendant LANDEC CORPORATION
7 (hereinafter “Defendants”). The Court, having carefully considered the briefs, argument of counsel
8 and all the matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiff’s
9 Motion for Preliminary Approval of Class and PAGA Action Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class Action Claims
12 and Release of Claims (“Settlement Agreement” or “Agreement”), a true and correct copy of which is
13 attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the Settlement
14 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
15 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendants shall pay is Four Hundred Ninety-Five Thousand Dollars (\$495,000.00). It appears to the
20 Court on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as
21 to all Class Members when balanced against the probable outcome of further litigation relating to
22 certification, liability, and damages issues. It further appears that investigation and research have been
23 conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It
24 further appears to the Court that settlement at this time will avoid substantial additional costs by all
25 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the
26 litigation. It further appears that the Settlement has been reached as the result of intensive, serious, and
27 non-collusive arms-length negotiations.

4. The Court preliminarily finds that the Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Class Members are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. Plaintiff seeks a Class Counsel Award not to exceed one-third of the Gross Settlement Amount, currently estimated to be One Hundred Sixty-Five Thousand Dollars (\$165,000.00), plus costs and expenses not to exceed Twenty Thousand Dollars (\$20,000), and proposed Class Representative Service Award to the Class Representative, Robert Baray, in an amount not to exceed Seventeen Thousand, Five Hundred Dollars (\$17,500.00). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Award or the Class Representative Service Award until the Final Approval Hearing.

6. The Court recognizes that Plaintiff and Defendants stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Class:

“All persons who are or previously were employed by Defendants in California and classified as non-exempt employees during the Class Period [July 16, 2017 to June 6, 2022] including participating Class Members (a Class Member who does not submit a valid and timely exclusion request from the Settlement) or Non-Participating Class Member (any Class Member who opts out of the Settlement by sending a valid and timely exclusion request).”

7. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)

common questions of law and fact predominate, and there is a well-defined community of interest amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the Class Representative will fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified to act as counsel for the Class Representative in her individual capacity and as the representative of the Class Members.

8. The Court provisionally appoints plaintiff ROBERT BARAY as the representative of the Class.

9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC, and Shani Zakay, Esq., of the Zakay Law Group, APLC, as Class Counsel for the Class Members.

10. The Court hereby approves, as to form and content, the Proposed Notice of Class Action Settlement (“Notice Packet”) attached to the Agreement as Exhibit “A”. The Court finds that the Notice Packet appears to fully and accurately inform the Class Members and Aggrieved Employees of all material elements of the proposed Settlement, including the right of any Class Member to be excluded from the Class by submitting a written request for exclusion, and of each Class Member’s right and opportunity to object to the Settlement. The Court further finds that the distribution of the notices substantially in the manner and form set forth in the Agreement and this Order meets the requirements of due process, is the most reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by first class mail, pursuant to the terms set forth in the Agreement.

11. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator. Within ten (10) business days after the Preliminary Approval Date, Defendants shall provide to the Settlement Administrator the Class Data, including information regarding Class Members that Defendants will in good faith compile from its records, including each Class Member’s full name; last known address; Social Security Number; and start dates and end dates of employment. Within fourteen (14) calendar days after receiving the Class Data from Defendants, the Settlement Administrator shall mail and email

copies of the Notice Packets to all Class Members via first class U.S. Mail and electronic mail using its best judgment to determine the current mailing address for each Class Member.

12. The Court hereby preliminarily approves the proposed procedure for exclusion from the Settlement. Any Class Member may individually choose to opt out of and be excluded from the Settlement as provided in the Notice Packet by following the instructions for requesting exclusion from the Settlement of the Released Class Claims that are set forth in the Notice Packet. All requests for exclusion must be postmarked or received by the Response Deadline which is forty-five (45) days after the date the Notice Packet is mailed to the Class Members or, in the case of a re-mailed Notice Packet, not more than fifteen (15) days from the original Response Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or comment thereon. Class Members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement, and Judgment. A request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted and will be deemed invalid.

13. Any Class Member who has not opted out may appear at the final approval hearing and may object or express the Class Member's views regarding the Settlement and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice Packet. Class Members will have forty-five (45) days from the date the Settlement Administrator mails the Notice Packet to postmark their written objections to the Settlement Administrator.

14. A final approval hearing shall be held before this Court on _____ at _____ AM in Department 2 of the Santa Barbara County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether an Order Granting Final Approval should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and

1 reasonable to the Class; and to finally approve the Class Counsel Award, Class Representative Service
2 Award, and the Settlement Administration Costs. All papers in support of the motion for final approval
3 and the motion for Attorneys' Fees, Costs, and Service Award shall be filed with the Court and served
4 on all counsel no later than twenty-eight (28) calendar days following the expiration of the Response
5 Deadline.

6 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
7 shall be construed as a concession or admission by Defendants in any way, and shall not be used as
8 evidence of, or used against Defendants as an admission or indication in any way, including with
9 respect to any claim of any liability, wrongdoing, fault, or omission by Defendants or with respect to
10 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
11 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
12 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted
13 in evidence as received as or deemed to be evidence for any purpose adverse to the Defendants,
14 including, but not limited to, evidence of a presumption, concession, indication or admission by
15 Defendants of any liability, fault, wrongdoing, omission, concession or damage.

16 16. In the event the Settlement does not become effective in accordance with the terms of the
17 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become
18 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
19 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
20 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
21 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
22 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

23 17. Pending final determination of whether the Settlement should be approved, Class
24 Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting,
25 intervening in, instigating or in any way participating in the commencement or prosecution of any
26 lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting
27 any claims that are, or relate in any way to, the Released Class Claims, unless and until they submit a
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1 timely request for exclusion pursuant to the Agreement.

2 18. The Court reserves the right to adjourn or continue the date of the final approval hearing
3 and all dates provided for in the Agreement without further notice to Class Members and retains
4 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

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6 Dated: _____

7 JUDGE OF THE SUPERIOR COURT
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