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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 01 2021

BY 
JESSICA MORALES, DEPUTY

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JOSE GONZALEZ MONTIEL, individually,
and on behalf of all others similarly situated,

Plaintiff,

vs.

V & Y FOODS, INC., et al.,

Defendants.

Case No.: CIVDS2000057

[Hon. David Cohn, Dept. S26]

CLASS ACTION

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT;**

JUDGEMENT THEREON

Date: August 31, 2021
Time: 10:00 a.m.
Courtroom: Dept. S26
Judge: Hon. David Cohn

Action Filed: January 6, 2020
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 Plaintiff JOSE GONZALEZ MONTIEL ("Plaintiff") and Defendants V & Y FOODS, INC.,
3 DESERT SKY PLAZA FOODS, INC., and A.V. FOODS, INC. ("Defendants") have reached terms of
4 settlement for a putative class action.

5 Plaintiff has filed a motion for final approval of a class action settlement of the claims asserted
6 against Defendant in this action, memorialized in the JOINT STIPULATION OF CLASS ACTION
7 AND PAGA ACTION SETTLEMENT (*see* Declaration of H. Scott Leviant In Support of Plaintiff's
8 Motion for Final Approval of Class Action Settlement ["Leviant Decl."], at Exh. 1). The JOINT
9 STIPULATION OF CLASS ACTION AND PAGA ACTION SETTLEMENT is referred to herein as
10 the "Agreement" or "Settlement."

11 After reviewing the Agreement, the Notice process, and other related documents, and having
12 heard the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

13 1. The Court finds that the terms of the proposed class action Settlement are fair,
14 reasonable, and adequate, pursuant to California Code of Civil Procedure § 382. In granting
15 preliminary approval of the class action settlement the Court has considered the factors identified in
16 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v. Apple Computer,*
17 *Inc.*, 91 Cal. App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706 (2006).

18 2. The Court finds that the Settlement has been reached as a result of intensive, serious and
19 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
20 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate
21 their respective positions. The Court also finds that settlement at this time will avoid additional
22 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
23 of the action. The Court finds that the risks of further prosecution are substantial.

24 3. The parties' Settlement is granted final approval as it meets the criteria for final
25 settlement approval. The settlement falls within the range of possible approval as fair, adequate and
26 reasonable, and appears to be the product of arm's-length and informed negotiations and to treat all Class
27 Members fairly. No Class Member has objected to the Settlement. The Class meets the requirements for
28 conditional certification for settlement purposes only under Code of Civil Procedure § 382.

1 4. The Notice of Class Action Settlement (“Class Notice”) provided to the Class conforms
2 with the requirements of Code of Civil Procedure § 382, Civil Code § 1781, Rules of Court 3.766 and
3 3.769, the California and United States Constitutions, and any other applicable law, and constitutes the
4 best notice practicable under the circumstances, by providing individual notice to all Class Members
5 who could be identified through reasonable effort, and by providing due and adequate notice of the
6 proceedings and of the matters set forth therein to the other Class Members. The Class Notice fully
7 satisfied the requirements of due process.

8 5. The following persons are certified as Class Members solely for the purpose of entering
9 a settlement in this matter:

10 All individuals employed by Defendants in California and classified as “non-
11 exempt” at any time during the Class Period (the “Class Period” is January 16, 2016
through April 12, 2021). (Settlement, ¶¶ 3-4.)

12 The Court finds that there are 303 individuals in the Class, 137 of whom worked within the PAGA claim
13 period, as set forth in the Declaration of Taylor Mitzner on Behalf of Settlement Administrator with
14 Respect to Opt Outs and Objections Received. No Class Members requested exclusion from the
15 Settlement; all Class Members are Settlement Class Members.

16 6. Plaintiff JOSE GONZALEZ MONTIEL is appointed the Class Representative. The
17 Court finds Plaintiff’s counsel are adequate, as they are experienced in wage and hour class action
18 litigation and have no conflicts of interest with absent Class Members, and that they adequately
19 represented the interests of absent class members in the Litigation. Kane Moon, H. Scott Leviant, and
20 Lilit Tunyan of Moon & Yang, APC, are appointed Class Counsel.

21 7. The Court appoints Phoenix Settlement Administrators to act as the Settlement
22 Administrator, pursuant to the terms set forth in the Agreement.

23 8. No Class Member requested exclusion from the Settlement Class. All Class Members
24 are bound by the Final Approval Order and Judgment in the Action.

25 9. Upon entry of this Final Approval Order and Judgment, funding of the Settlement and
26 compensation to the Class Members shall be implemented pursuant to the terms of the Settlement.

27 10. In addition to any recovery that the Plaintiff may receive under the Settlement as a Class
28 Member, and in recognition of the Plaintiff’s efforts on behalf of the Class, the Court hereby approves

1 the payment of an enhancement award to Plaintiff JOSE GONZALEZ MONTIEL in the amount of
2 \$7,500.00 / \$_____.

3 11. The Court approves the payment of attorneys' fees to Class Counsel Moon & Yang,
4 APC, in the amount of \$66,666.67 / \$_____.

5 12. Litigation expenses are approved by the Court in the following amounts: \$11,329.70 /
6 \$_____ is awarded to Moon & Yang, APC (the total awarded does not exceed the
7 \$15,000 limit on costs pursuant to the Settlement Agreement).

8 13. The Court approves and orders payment in the amount of \$8,000 /
9 \$_____ to Phoenix Settlement Administrators for performance of its services as the
10 Settlement Administrator, as set forth in the Class Notice.

11 14. Upon completion of administration of the Settlement, the parties shall file a declaration
12 stating that all amounts payable under the Settlement have been paid and that the terms of the
13 Settlement have been completed.

14 15. The Court sets an Order to Show Cause hearing regarding compliance with all fund
15 distribution requirements under the Settlement for 8.31, 2023 (at least one- and one-
16 half years after November 20, 2021), at 9:00 (a.m.) p.m., in Dept. S-26 of the above-entitled Court. A
17 declaration from the Settlement Administrator regarding compliance shall be filed with the Court no
18 later than 5 court days before 3/31, 2023. No appearance by the parties is required at the Order to
19 Show Cause hearing if the Settlement Administrator's declaration is timely filed and the Settlement
20 Administrator reports that all of the distributions under the Settlement are complete, including the
21 transmission of funds associated with uncashed checks to the California State Controller's Office for
22 deposit into the California Unclaimed Property Fund in the name of any Class Member or Members
23 having failed to cash Settlement checks.

24 16. The Court approves and orders payment in the amount of \$15,000.00 to the Labor and
25 Workforce Development Agency in compromise of claims under the Labor Code Private Attorneys
26 General Act of 2004 (Labor Code § 2698 *et seq.*).

27 17. Once Defendants fully fund the Settlement by paying the Gross Settlement Amount and
28 the employer share of payroll taxes, Plaintiff and the Class Members shall have, by operation of this

1 Final Approval Order and Judgment, fully, finally, and forever released, relinquished, and discharged
2 Defendants from the released claims described in the Settlement.

3 18. In accordance with California Rule of Court 3.771(b), the parties are ordered to give notice
4 of this final Order and Judgment to all Class Members by posting the Order and Judgment for 90 calendar
5 days on the Settlement Administrator's website.

6 19. The Judgment set forth herein is intended to be a final disposition of the Action in its
7 entirety and is intended to be immediately appealable.

8
9 **JUDGMENT**

10 In accordance with and for the reasons stated in the Final Approval Order, Judgment shall be
11 entered whereby the Plaintiff and all Class Members shall take nothing from Defendants, except as
12 expressly set forth in the Final Approval Order and the Settlement, filed as Exhibit 1 to the Declaration of
13 H. Scott Leviant in Support of Plaintiff's Motion for Final Approval of Class Action Settlement.

14 The Class Members and Settlement Class Members are:

15 All individuals employed by Defendants in California and classified as "non-exempt" at
16 any time during the Class Period (the "Class Period" is January 16, 2016 through April
17 12, 2021). (Settlement, ¶¶ 3-4.)

18 Pursuant to California Code of Civil Procedure Section 664.6 and Rule 3.769(h) of the California
19 Rules of Court, this Court reserves exclusive and continuing jurisdiction over this Action, the Plaintiff,
20 Settlement Class Members, and Defendants, for the purposes of:

21 (a) supervising the implementation, enforcement, construction, and interpretation of the
22 Settlement, the Preliminary Approval Order, the plan of allocation, the Final Approval Order,
23 and the Judgment; and

24 (b) supervising distribution of amounts paid under this Settlement.

25 **IT IS SO ORDERED.**

26 Dated: 9/1/21

27 
28 Hon. David Cohn
SAN BERNARDINO SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT; JUDGEMENT THEREON** on the interested parties in this action by sending the original [or] a true copy thereof to interested parties as follows [or] as stated on the attached service list:

Jeff J. Astarabadi
jastarabadi@muchlaw.com
Steven P. Blonder
sblonder@muchlaw.com
Camille N. Khodadad
ckhodadad@muchlaw.com
MUCH SHELIST, P.C.
660 Newport Center Drive, Suite 900
Newport Beach, CA 92660
Facsimile: (949) 385-5355

Attorneys for Defendants

BY U.S. MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL DELIVERY: I delivered said document(s) to the office of the addressee shown above under whom it says delivered by personal delivery.

BY OVERNIGHT DELIVERY: I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **July 27, 2021** at Los Angeles, California.

Jessica Flores
Type or Print Name



Signature