

02/15/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

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11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**
13 **SPRING STREET COURTHOUSE**

14 FLOR DE MARIA MARROQUIN, an
15 individual, on her own behalf and on behalf of
16 all others similarly situated

17 Plaintiff,

18 v.

19 FOOD CASTLE, INC., a California
20 corporation; and DOES 1 through 100,
21 inclusive,

22 Defendant.

CASE NO. 21STCV22582

**[PROPOSED] ORDER GRANTING
AMENDED PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Complaint Filed: June 15, 2021

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1 On February 6, 2023, the Status Conference re: Class Notice came on regularly for hearing
2 in Department 9 of the above-captioned court, Hon. Yvette M. Palazuelos, presiding.

3 Having heard the argument from counsel and reviewed the Joint Status Report Re: Class
4 Notice filed by Plaintiff Flor De Maria Marroquin (“Plaintiff”) and Defendant Food Castle, Inc.
5 (“Food Castle” or “Defendant”), including the Declaration of Kevin Lipeles, the Amended Joint
6 Stipulation of Settlement and Release (“Amended Settlement Agreement”), the Class Notice and
7 Publication Notice (which are attached as Exhibits C and D, respectively, to the Amended
8 Settlement Agreement), THE COURT HEREBY MAKES THE FOLLOWING FINDINGS AND
9 ORDERS:

10 Plaintiff and her counsel filed this class action lawsuit alleging that Defendant failed to pay
11 its non-exempt employees’ overtime, minimum wages and afford them rest breaks. These Labor
12 Code violations also resulted in Food Castle issuing inaccurate wage statements to class members
13 and failing to pay all wages due upon termination of employment to class members who are former
14 employees. Plaintiff alleged on a class basis that the foregoing violated California’s Unfair
15 Competition Law, Business and Professions Code §§17200, *et seq.* Further, Plaintiff alleged that
16 Defendant was liable for PAGA remedies pursuant to California Labor Code §2699.

17 On June 15, 2021, Plaintiff filed her Original Class Action Complaint in the Superior Court
18 of California, Los Angeles County, on behalf of herself and others similarly situated for certain
19 present and former employees of Defendant Food Castle, Inc. for: (1) Failure To Pay Overtime
20 (Cal. Labor Code §§200, 510, 1194, 1198, *et seq.*); (2) Failure To Issue Accurate Itemized Wage
21 Statements (Cal. Labor Code §§ 226); (3) Failure to Pay For Rest Periods Not Provided (Cal. Labor
22 Code §226.7) (4) Failure to Pay Minimum Wage (Cal. Labor Code §§ 1197); (5) Failure To Pay
23 All Wages Due Upon Separation of Employment (Cal. Labor Code §§ 201 -203); and (6)
24 Unfair/Unlawful Business Practices (Cal. Bus. And Prof. Code §§ 17200 *et seq.*).

25 On August 19, 2021, Plaintiff filed her First Amended Class Action Complaint in the Los
26 Angeles Superior Court, adding a claim pursuant to the Private Attorney General Act of 2004, Cal.
27 Lab. Code §§2699, *et seq.* On March 29, 2022, Plaintiff filed her Second Amended Class Action
28 Complaint in the Los Angeles Superior Court, revising the claim for minimum wage.

On August 11, 2022, the Court granted preliminary approval of the Settlement.

1 Thereafter, Plaintiff was apprised by Defendant and the Settlement Administrator that
2 Defendant does not have social security numbers and contact information for sixty-two (62) Class
3 Members. Further, Defendant has addresses for seven (7) Class Members, but no social security
4 numbers. As a result, the Parties seek to amend the August 11, 2022 Preliminary Approval Order.

5 The Court finds on a preliminary basis that the Amended Settlement Agreement, which is
6 attached as an Exhibit 1 to the Declaration of Kevin Lipeles and is hereby incorporated in full by
7 reference as part of this Order Granting Amended Preliminary Approval, appears to be within the
8 range of reasonableness of a settlement which could ultimately be given final approval by the
9 Court. The Court notes that Defendant has agreed to pay Five Hundred Seventy-Five Thousand
10 Dollars and No Cents (\$575,000.00) (“Maximum Settlement Amount”) to the putative class as
11 settlement in full of past claims, with no reversion to Defendant of any settlement monies
12 remaining after all Class Members are paid, as more specifically described in the Amended
13 Settlement Agreement. Any settlement checks which remain uncashed upon the expiration of 180
14 days of issuance will be cancelled and funds associated with such cancelled checks, will be
15 remitted to the California State Controller’s Office, Unclaimed Property Division in the name of
16 the Participating Class Member who failed to cash their check. The Court also notes that out of the
17 Maximum Settlement Amount, Defendant has agreed to pay up to Two Hundred Thousand Two
18 Hundred Fifty Dollars and No Cents (\$201,250.00) as attorneys’ fees (“Attorneys’ Fees”), costs up
19 to Eight Thousand Five Hundred Dollars and No Cents (\$8,500.00) (“Costs”), up to Seven
20 Thousand Five Hundred Dollars and No Cents (\$7,500.00) as an enhancement payment to the
21 Named Plaintiff (“Enhancement Payment”), and up to Seven Thousand Dollars and No Cents
22 (\$7,000.00) to Phoenix Class Action Administration Solutions (“Phoenix”) to administer the
23 settlement and provide direct Class Notice (“Administrator’s Fee”).

24 **Publication Notice:** In addition to the Maximum Settlement Amount, Defendant agrees to
25 pay Phoenix up to Thirteen Thousand Dollars and No Cents (\$13,000) for the costs related to the
26 provision of the Publication Notice. As a result, the Publication Notice will not decrease the
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1 amount to be recovered by Class Members as originally preliminarily approved by the Court. The
2 Publication Notice will be provided in both the Los Angeles Times, Friday edition, in print and
3 online, and La Opinión, Friday edition, in print and online, for 4 weeks, substantially in the form
4 attached as Exhibit D to the Amended Settlement Agreement and as more fully described therein.

5 It appears to the Court on a preliminary basis that the Amended Settlement Agreement is
6 fair and reasonable when balanced against the probable outcome of further litigation relating to
7 class certification, liability and damages issues and potential appeal. It further appears that
8 significant investigation, research, and informal discovery have been conducted such that counsel
9 for the parties at this time are able to reasonably evaluate their respective positions. It further
10 appears that settlement at this time will avoid substantial costs, delay and risks that would be
11 presented by the further prosecution of the litigation. It further appears that the Amended
12 Settlement Agreement has been reached as the result of intensive, serious and non-collusive
13 negotiations between the parties.

14 The Court hereby orders that the putative class of “all non-exempt persons employed by
15 Defendant in the State of California at any time from and including June 15, 2017 through the date
16 of Amended Preliminary Approval” shall be conditionally certified for settlement purposes only.
17 The Court finds that the proposed Class Notice and Publication Notice fairly and adequately
18 advises Class Members of: the conditional certification for settlement purposes only; the amended
19 preliminary Court approval of the proposed Amended Settlement Agreement; the date of the Final
20 Fairness and Approval Hearing; the terms of the proposed settlement and the benefits available to
21 Class Members; and the Class Members' rights to opt out or object to their share of the Settlement
22 Amount, and the timing and procedures for doing so. The Court further finds the Class Notice and
23 Publication Notice clearly comport with all constitutional requirements, including those of due
24 process.

25 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES
26 THE PROPOSED NOTICE TO THE CLASS MEMBERS.

27 For purposes of the Amended Settlement Agreement only, this litigation is hereby
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CERTIFIED as a class action pursuant to California Code of Civil Procedure Section 382.

1 The Court hereby APPOINTS Kevin Lipeles, Esq. and Thomas Schelly, Esq. as Class
2 Counsel. The Named Plaintiff Flor De Maria Marroquin is approved as class representative for the
3 settlement class.

4 The mailing to the last known addresses of Settlement Class Members as specifically
5 described within the Amended Settlement Agreement constitutes an effective method of notifying
6 Settlement Class Members for whom Defendant has addresses of their rights with respect to the
7 proposed settlement. Publication Notice constitutes an effective method of notifying the sixty-two
8 (62) Settlement Class Members for whom Defendant does not have addresses of their rights with
9 respect to the proposed settlement.

10 ACCORDINGLY, THE COURT HEREBY ORDERS the following settlement approval
11 schedule:

12 Within fifteen (15) calendar days after entry 13 of the Amended Preliminary Approval Order	Deadline for Defendant to commence publication of Publication Notice. Stip. at §16.1.c.
14 Within fifteen (15) calendar days after entry 15 of the Amended Preliminary Approval Order	Settlement Administrator shall set up an internet website and post the Second Amended Complaint, Amended Settlement Agreement, Amended Preliminary Approval Order, Class Notice and Claim Form. §16.1.d.
17 Within fifteen (15) calendar days after 18 receiving the Class Data from Defendant	Settlement Administrator shall mail Class Notice to one hundred eighteen (118) Settlement Class Members. Stip. at §16.1.b.
20 No later than eighty (80) days after the 21 Settlement Administrator mails Class Notice to Class Members	Deadline for Settlement Class Members to request for exclusion/opt-out from the Settlement to be sent to the Settlement Administrator. Stip. at §2.26.
23 No later than eighty (80) days after the 24 Settlement Administrator mails Class Notice to Class Members	Deadline for Settlement Class Members to object to the Settlement. Stip. at §2.26.
25 Response Deadline for Class Notice	The date eighty (80) days after entry of the Amended Preliminary Approval Order and the last date on which Settlement Class Members may postmark requests for

	exclusion or objections to the Settlement. Stip. at §2.26.
1 2 3 4	Response Deadline for Publication Notice The date eighty (80) days after entry of the Amended Preliminary Approval Order and the last date on which Settlement Class Members may postmark Claim Forms, requests for exclusion or objections to the Settlement. Stip. at §2.27.
5 6 7	No later than fifteen (15) calendar days from the original Response Deadline for Class Notice Settlement Class Members who received a re-mailed Class Notice shall have their Response Deadline For Class Notice extended. Stip. at §16.1.b.
8 9 10	By mail or fax and postmarked or fax-stamped on or before either the Response Deadline for Class Notice or the Response Deadline for Publication Notice of the postmark of the Class Notice Settlement Class Members must submit any disputes regarding their workweeks information used to calculate the Individual Settlement Payment or Individual PAGA Payment. Stip. at §16.1.f.
11 12	Effective Date The date on which the Superior Court’s judgment approving the Joint Stipulation of Settlement and Release becomes “Final.” Stip. at §2.9.
13 14 15	Within thirty (30) calendar days after the First Payment Defendant shall begin electronically wiring the remaining fifty (50%) percent of the Maximum Settlement Amount, or \$287,500.00 (“Final Payment”). Stip. at §10.b.
16 17 18	Within five (5) business days of receipt of the last monthly installment of the Final Payment Claims Administrator shall distribute Individual Settlement Payments to Participating Class Members and Individual PAGA Payments to PAGA Employees. Stip. at §10.c.
19 20 21	Within five (5) business days of receipt of the of the last monthly installment of the Final Payment Claims Administrator shall distribute the attorneys’ fees and costs to Class Counsel. Stip. at §10.c.
22 23 24	Within five (5) business days of receipt of the last monthly installment of the Final Payment Claims Administrator shall distribute the Enhancement Payment to Plaintiff. Stip. at §10.c.

1 2 3 4	Within five (5) business days of receipt of the last monthly installment of the Final Payment	Claims Administrator shall distribute the LWDA Payment to the LWDA. Stip. at §10.c.
5 6 7	Within five (5) business days of receipt of the last monthly installment of the Final Payment	Claims Administrator shall distribute the Settlement Administration Costs to itself. Stip. at §10.c.
8 9 10	Within fifteen (15) calendar days of learning that ten percent (10%) or more of the Settlement Class Members submit Requests for Exclusion	Plaintiff or Defendant must provide written notice to Class Counsel of their exercise of the option to terminate the Settlement. Stip. at §18.
11 12 13	Within ten (10) calendar days after the Response Deadline For Class Notice and the Response Deadline For Publication Notice	Settlement Administrator shall submit a declaration in support of Plaintiff's Motion for Final Approval. Stip. at §16.2.b.

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IT IS FURTHER ORDERED that the Final Fairness and Approval Hearing shall be held at 10:00 a.m. on June 27, 2023, in Department 9 of the Superior Court for the State of California, County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, to consider the good faith, fairness, adequacy and reasonableness of the proposed Amended Settlement Agreement preliminarily approved by this Order Granting Amended Preliminary Approval, and to consider Plaintiff's application for Attorneys' Fees, Costs and Enhancement Payment. Any party to this case, including Class Members, in person or by counsel, may be heard, to the extent allowed by the Court, in support of or in opposition to the Court's determination of the good faith, fairness, reasonableness and adequacy of the proposed Amended Settlement Agreement, including the Attorneys' Fees, Costs and Enhancement Payment. The Court expressly reserves the right to adjourn or continue the Final Fairness and Approval Hearing from time to time without further notice to Class Members.

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IT IS FURTHER ORDERED that, pending final determination of whether the proposed Amended Settlement Agreement should be granted final approval, the Plaintiff and all members of the putative class, either directly or representatively, or in any other capacity, shall not commence

1 or prosecute any action or proceeding asserting any of the Released Claims against any of the
2 Released Parties, as defined in the Amended Settlement Agreement.


3 IT IS FURTHER ORDERED that if for any reason the Court does not execute and file an
4 Order of Final Approval, or if the Final Order and Dismissal does not occur for any reason
5 whatsoever, the Amended Settlement Agreement and the proposed settlement that is the subject of
6 this Order, and all evidence and proceedings had in connection therewith, shall be without
7 prejudice to the status quo ante rights of the parties to the litigation, as more specifically set forth in
8 the Amended Settlement Agreement.

9 IT IS FURTHER ORDERED that the Amended Settlement Agreement shall not be
10 construed as an admission or evidence of either liability or the appropriateness of class certification
11 in the non-settlement context, as more specifically set forth in the Amended Settlement Agreement.

12 IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in
13 this matter except those contemplated herein and in the Amended Settlement Agreement are stayed.

14 IT IS SO ORDERED.

15 Dated: 02/15/2023

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17 Hon. Jovette M. Palazuelos
18 Judge of the Superior Court

19 Plaintiff to give notice.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles , State of California, I am over the age of eighteen years and am not a party to this action; my business address is Mitchell Silberberg & Knupp LLP, 2049 Century Park East, 18th Floor, Los Angeles, CA 90067-3120, and my business email address is a1s@msk.com.

On February 10, 2023, I served a copy of the foregoing document(s) described as **[PROPOSED] ORDER GRANTING AMENDED PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action at their last known address as set forth below by taking the action described below:

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Attorneys for Plaintiff, FLOR DE MARIA MARROQUIN

BY PERSONAL DELIVERY: I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by **First Legal** of the document(s) listed above to the person(s) at the address(es) set forth above.

BY ELECTRONIC MAIL: I served the above-mentioned document electronically on counsel or record identified on the attached **ELECTRONIC SERVICE LIST** via transmission through **CASE ANYWHERE**, pursuant to the **INITIAL STATUS CONFERENCE ORDER ISSUED JUNE 28, 2021 AUTHORIZING ELECTRONIC SERVICE** and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 10, 2023, at Los Angeles, California.



Alma L. Silva

Case Anywhere Electronic Service List

Case Name: **Marroquin, et al. v. Food Castle, Inc.**

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