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 on behalf of himself and all others similarly situated
 and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

DANIEL DE JESUS MORENO, on behalf of
 himself and all others similarly situated and
 aggrieved,

Plaintiff,

v.

M & J SEAFOOD COMPANY, INC., a
 California corporation; and DOES 1 through
 100, inclusive,

Defendants.

CASE NO.: 22STCV03341

[Assigned for all purposes to the Hon. William
 F. Highberger in Dept. 10]

**~~[PROPOSED]~~ ORDER GRANTING
 PRELIMINARY APPROVAL OF CLASS
 AND REPRESENTATIVE ACTION
 SETTLEMENT AND CERTIFYING
 CLASS FOR SETTLEMENT PURPOSES
 ONLY**

This Court, having considered the Motion of plaintiff Daniel De Jesus Moreno (“Plaintiff”) for Preliminary Approval of the Class and Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations of David D. Bibiyan, Vedang J. Patel, Plaintiff, Jodey Lawrence, Joint Stipulation Re: Class Action and Representative Action Settlement (the “Settlement Agreement”), the Notice of Proposed Class

FILED
 Superior Court of California
 County of Los Angeles
03/09/2023

David W. Slayton, Executive Officer / Clerk of Court
 By: R. Aspiras Deputy

1 Action Settlement and Date for Final Approval Hearing ("Class Notice"), and other documents
2 submitted in support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND**
3 **DECREES THAT:**

4 1. The definitions set out in the Settlement Agreement are incorporated by reference
5 into this Order; all terms defined therein shall have the same meaning in this Order.

6 2. The Court certifies the following settlement class for the purpose of settlement only:
7 all current and former non-exempt, hourly-paid employees who worked for defendant M & J
8 Seafood Company, Inc., ("Defendant") either directly or through any subsidiary, staffing agency, or
9 professional employer organization, at any time during the period from January 27, 2018 through
10 July 6, 2022 ("Class Period") in California ("Class Members" or "Settlement Class").

11 3. The Court preliminarily appoints named plaintiff Daniel De Jesus Moreno as Class
12 Representative, and David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law Group, P.C., as Class
13 Counsel.

14 4. The Court preliminarily approves the proposed class settlement upon the terms and
15 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
16 settlement appears to be within the range of reasonableness of settlement that could ultimately be
17 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
18 amount is fair, adequate and reasonable as to all potential class members when balanced against the
19 probable outcome of further litigation relating to liability and damages issues. It further appears that
20 extensive and costly investigation and research has been conducted such that counsel for the parties
21 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
22 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
23 delay and risks that would be presented by the further prosecution of the Action. It further appears
24 that the settlement has been reached as the result of intensive, non-collusive and arms-length
25 negotiations utilizing an experienced third-party neutral.

26 5. The Court approves, as to form and content, the Class Notice that has been submitted
27 herewith.

28 6. The Court directs the mailing of the Class Notice by first-class mail to the Class

Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies with the requirements of law and appears to be the best notice practicable under the circumstances.

7. The Court hereby preliminarily approves the definition and disposition of the Gross Settlement Amount of \$695,000.00, which is inclusive of: attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement Agreement, amounts to \$243,250.00, in addition to actual costs incurred of up to \$25,000.00; service award of up to \$7,500.00 to Plaintiff; costs of settlement administration of no more than \$5,950.00; and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of \$20,000.00, of which \$15,000.00 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA") and \$5,000.00 to "Aggrieved Employees," defined as Class Members working for Defendant during the period from January 31, 2021 through June 1, 2022 ("PAGA Period") as non-exempt, hourly-paid employees in California.

8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

9. Defendant shall pay the Gross Settlement Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Settlement Administrator within fourteen (14) calendar days of the Court granting final approval of this Settlement.

10. Class Member's "Workweek" shall mean the number of weeks that a Settlement Class Member was employed by and worked for the Defendant in a non-exempt, hourly position during the Class Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

11. The settlement is based Defendant's representation that there are no more than 11,220 Workweeks worked by Class Members during the Class Period. In the event the number of Workweeks worked increases by more than 5%, or 561 Workweeks worked, then the GFV shall be increased proportionally by the Workweeks worked in the Class Period in excess of 11,220 Workweeks by the Workweek Value. The Workweek Value shall be calculated by dividing the GFV by 11,220 Workweeks. The Parties agree that the Workweek Value amounts to and the settlement

1 amounts to \$61.94 per Workweek (\$695,000 / 11,220 Workweeks). Thus, for example, should there
2 be 12,335 Workweeks worked by Class Members in the Class Period, then the GFV shall be
3 increased by \$69,063.10. ((12,335 Workweeks – 11,220 Workweeks) x \$61.94 per Workweek.).

4 12. The Court deems Phoenix Settlement Administrators (“Phoenix”) as the Settlement
5 Administrator, and payment of administrative costs, not to exceed \$5,950.00 out of the Gross
6 Settlement Amount for services to be rendered by Phoenix on behalf of the class.

7 13. The Settlement Administrator shall prepare and submit to Class Counsel and
8 Defendant’s Counsel a declaration attesting to the completion of the notice process as set forth in
9 the Settlement Agreement, including the number of attempts to obtain valid mailing addresses for
10 and re-sending of any returned Class Notices, as well as the identities, number of and copies of all
11 opt-outs and objections received.

12 14. The Court directs Defendant to, within seven (7) calendar days of this Order, provide
13 the Settlement Administrator with the “Class Data” for Settlement Class Members. The Class List
14 will include, for each Class Member, his or her: (1) name; (2) last known address(es) currently in
15 Defendant’s possession, custody, or control; (3) last known telephone number(s) currently in
16 Defendant’s possession, custody, or control; (4) last known Social Security Number(s) in
17 Defendant’s possession, custody, or control; and (5) the dates of employment (*i.e.*, hire dates, and,
18 if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member.

19 15. Because Social Security Numbers are included in the Class List, the Settlement
20 Administrator shall maintain the Class Data in confidence and shall only access and use the list to
21 administer the settlement in conformity with the Court’s orders.

22 16. Upon receipt of the Class Data, the Settlement Administrator shall perform an
23 address search using the United States Postal Service National Change of Address (the “NCOA”)
24 database and update the addresses contained on the Class Data with the newly found addresses, if
25 any. To the extent that this process yields an updated address, that updated address shall replace the
26 last known address and be treated as the new last known address for purposes of this Settlement,
27 and for subsequent mailings.

28 17. Within seven (7) calendar days of receiving the Class List from Defendant, the

1 Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
2 Members via first-class regular U.S. Mail using the most current mailing address information
3 available.

4 18. “Response Deadline” means the deadline for Settlement Class Members to mail any
5 Requests for Exclusion, objections, or Workweek Disputes to the Settlement Administrator, which
6 is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and
7 Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an
8 instance, the Class Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days
9 from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion,
10 Workweek Dispute or Objection. The date of the postmark shall be the exclusive means for
11 determining whether a Request for Exclusion, objection, or Workweek Dispute was submitted by
12 the Response Deadline.

13 19. Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
14 Settlement by mailing a written request to be excluded from the Settlement (“Request for
15 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To
16 be valid, a Request for Exclusion must include the Class Member’s name, social security number
17 and signature and the following statement: “Please exclude me from the Settlement Class in the
18 *Moreno v. M & J Seafood Company, Inc.* matter,” or any statement standing for the proposition that
19 the Class Member does not wish to participate in the Settlement.

20 20. Any Settlement Class Member who does not opt out of the Settlement by submitting
21 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
22 those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court
23 if Final Order Approving Settlement is granted.

24 21. Only Participating Class Members may object or comment regarding the Settlement.
25 In order for any Settlement Class Member to object to this Settlement in writing, or any term of it,
26 he or she must do so by mailing a written objection to the Settlement Administrator at the address
27 or phone number provided on the Class Notice no later than the Response Deadline.

28 22. Participating Class Members may (though are not required to) appear at the Final

1 Fairness and Approval hearing, either in person or through the objector's own counsel.

2 23. If a Class Member submits both an Objection and a Request for Exclusion, the
3 Request for Exclusion will control and the Objection will be void.

4 24. All papers filed in support of final approval, including supporting documents for
5 attorneys' fees and costs, shall be filed by ~~FFICCA~~.

6 ~~FFICCA~~ 25. A Final Fairness and Approval Hearing shall be held with the Court on
7 ~~FFICCA~~ at ~~FFICCA~~ in Department 7 of the above-entitled Court to determine:

8 (1) whether the proposed settlement is fair, reasonable and adequate, and should be finally approved
9 by the Court; (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the
10 amount of service award to the Class Representative; (4) the amount to be paid to the Settlement
11 Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and
12 Aggrieved Employees.

13 26. Within seven (7) calendar days after payment of the full Gross Settlement Amount
14 by Defendant, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
15 Administrator shall distribute all payments due under the Settlement, including the Individual
16 Settlement Payments to Participating Class Members and Individual PAGA Payments to Aggrieved
17 Employees, as well as the Court-approved payments for the Service Award to Plaintiff, attorneys'
18 fees and litigation costs and expenses to Class Counsel, Administration Costs to the Settlement
19 Administrator, and the LWDA Payment to the LWDA.

20 27. Participating Class Members will receive an Individual Settlement Payment and
21 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
22 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty
23 (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration
24 of the 180-day period, checks for such payments shall be canceled and funds associated with such
25 checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil
26 Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as
27 provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, 180
28 Montgomery Street, Suite 600, San Francisco, California 94104, the cy pres recipient, for use in Los

1 Angeles County.

2 28. In the event the settlement does not become effective in accordance with the terms
3 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
4 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
5 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

6
7 **IT IS SO ORDERED.**

8
9 Dated: 03/09/2023



~~William F. Highberger~~ / Judge
Judge of the Superior Court