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1 Kane Moon (SBN 249834)
2 Allen Feghali (SBN 301080)
3 Charlotte Mikat-Stevens (SBN 327047)
4 **MOON LAW GROUP, PC**
5 1055 W. Seventh St., Suite 1880
6 Los Angeles, California 90017
7 Telephone: (213) 232-3128
8 Facsimile: (213) 232-3125
9 E-mail: kmoon@moonlawgroup.com
10 E-mail: afeghali@moonlawgroup.com
11 E-mail: cmikat-stevens@moonlawgroup.com

12 *Attorneys for Plaintiff LUIS A. MORALES GOMEZ*

FILED
Superior Court of California
County of Los Angeles

11/02/2023

David W. Slayton, Executive Officer / Clerk of Court

By: L. MGreené Deputy

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 LUIS A. MORALES GOMEZ, individually,
12 and on behalf of all others similarly situated,

13 **Plaintiff,**

14
15 vs.

16
17 ARYA ICE CREAM DISTRIBUTING CO.,
18 INC., a California corporation; and DOES 1
19 through 10, inclusive,

20 **Defendants**

Case No.: 21STCV31170

CLASS AND REPRESENTATIVE ACTION

[Hon. Carolyn B. Kuhl, Dept. 12]

~~[PROPOSED]~~ **FINAL ORDER GRANTING
PLAINTIFF’S UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

[Filed with Plaintiff’s Notice of Unopposed
Motion, Memorandum of Points and Authorities,
the Declarations of Kane Moon, Plaintiff Gomez,
and Nicole Bench in Support of Motion, and
[Proposed] Final Judgment]

FINAL APPROVAL HEARING:

Date: November 2, 2023

Time: 10:30 a.m.

Dept.: 12

Action Filed: August 20, 2021

Trial Date: Not set

1 **[PROPOSED] ORDER**

2 On March 13, 2023, the Court entered an Order granting Plaintiff’s Motion for Preliminary
3 Approval of Class and PAGA Representative Action Settlement, conditional class certification, and
4 approval of Class Notice, and setting a Final Approval Hearing (the “Preliminary Approval Order”),
5 thereby preliminarily approving a settlement of the above-entitled action (the “Action”) that was
6 reached between Plaintiff Luis A. Morales Gomez (“Plaintiff”) and Defendant Arya Ice Cream
7 Distributing Co., Inc. (“Defendant,” and together with Plaintiff, the “Parties”), in accordance with
8 the Parties’ Amended Class Action and PAGA Settlement Agreement and Class Notice (the
9 “Settlement” or “Settlement Agreement”). The Settlement Agreement was attached as Exhibit C to
10 the Declaration of Kane Moon in Support of Plaintiff’s Further Briefing re: Motion for Preliminary
11 Approval of Class and PAGA Representative Action Settlement, and which, together with the exhibit
12 annexed thereto, set forth the terms and conditions for settlement of the Action. The Court now has
13 before it a Proposed Final Order to finally approve the Settlement and a concurrently filed Proposed
14 Final Judgment.

15 Due and adequate notice having been given to Class Members, and the Court having reviewed
16 the Settlement Agreement and duly considered Plaintiff’s Unopposed Motion for Final Approval of
17 Class and PAGA Representative Action Settlement, the supporting declarations and exhibits thereto,
18 all other papers filed and proceedings had hereto, the record in this Action, and any oral argument,
19 and good cause appearing,

20 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

21 1. The Court, for purposes of this Final Order and concurrently filed Final Judgment,
22 refers to all terms and definitions as set forth in the Settlement Agreement.

23 2. Plaintiff’s Unopposed Motion for Final Approval of Class and PAGA Representative
24 Action Settlement, including a motion for payment of attorneys’ fees and litigation costs to Class
25 Counsel, class representative service award, payment of the Settlement Administrator’s fees, and the
26 PAGA Penalty payments to the California Labor and Workforce Development Agency (the
27 “LWDA”) and Aggrieved Employees (collectively “Motion for Final Approval”), and whether the
28 Settlement should be finally approved as fair, reasonable, and adequate as to Class Members, came

1 before Department 12 of this Court, the Honorable Carolyn B. Kuhl presiding, on November 2, 2023.

2 3. The Court finds that the Settlement Agreement appears to have been made and entered
3 into in good faith, the terms of which are fair, reasonable, and adequate; was reached following
4 meaningful discovery and investigation conducted by Plaintiff and his counsel of record (“Class
5 Counsel”); is the result of serious, informed, adversarial, and arms-length negotiations between the
6 Parties; and therefore, meets the requirements for final approval. In so finding, the Court has
7 considered all the evidence presented, including evidence regarding the strength of Plaintiff’s claims;
8 the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the
9 amount offered in the Settlement; the extent of investigation and discovery completed; and the
10 experience and views of Class Counsel. The Court has further considered the absence of objections
11 to and requests for exclusion from the Settlement by Class Members. Accordingly, the Court hereby
12 GRANTS Plaintiff’s Motion for Final Approval and ORDERS Judgment to be entered in
13 accordance with the terms herein.

14 4. The Court certifies, for settlement purposes only, the following Class (the “Settlement
15 Class”): All non-exempt, hourly employees of Defendant who worked for Defendant in California
16 during the Class Period (the “Class Period” is August 21, 2017 to October 13, 2022). Excluded from
17 the Settlement Class are any and all persons who submitted a valid and timely Request for Exclusion.

18 5. The deadline to request exclusion from or to submit written objections to the
19 Settlement was September 11, 2023. No requests for exclusion or written objections were received.

20 6. The Court Approved Notice of Class Action Settlement and Hearing Date for Final
21 Court Approval (the “Notice”), which was attached to the Settlement Agreement as Exhibit A and
22 provided to the Class pursuant to the plan for distribution described under the Settlement Agreement,
23 conformed with the requirements of California Rules of Court 3.766 and 3.769, and constituted the
24 best notice practicable under the circumstances, by providing individual and adequate notice of the
25 proceedings and of the matters set forth therein to Class Members. The Notice fully satisfied the
26 requirements of due process and provided the Class Members with adequate instructions and a variety
27 of means to obtain additional information.

28 7. A full opportunity has been afforded to the Settlement Class Members to participate

1 in the Final Approval Hearing, and all Settlement Class Members and other persons wishing to be
2 heard have been heard and/or had an opportunity to be heard. The Settlement Class Members have
3 had a full and fair opportunity to exclude themselves from the Settlement or object to the Settlement.
4 Accordingly, the Court determines that all Settlement Class Members who did not timely and validly
5 opt out of the Settlement are bound by this Final Order and concurrently filed Final Judgment.

6 8. **Releases of Claims.** Effective on the date when Defendant fully funds the entire Gross
7 Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual
8 Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released
9 Parties as follows:

10 a. **Identity of Released Parties.** “Released Parties” means Defendant and any
11 parent, subsidiary, affiliate, predecessor or successor, and all agents, employees (current and
12 former), officers, directors, insurers and attorneys.

13 b. **Scope of Plaintiff’s Release.** Plaintiff and his respective former and present
14 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
15 release and discharge Released Parties from all claims, transactions, or occurrences that occurred
16 during the Class Period, including, but not limited to all claims, demands, rights, liabilities and
17 causes of action of every nature and description whatsoever, known or unknown, asserted or that
18 might have been asserted, whether in tort, contract, or for violation of any state or federal statute,
19 rule or regulation arising out of, relating to, or in connection with any act or omission by or on the
20 part of any of the Released Parties arising out of, based upon, or relating to Class Representative’s
21 employment with Defendant or the remuneration for or termination of such employment committed
22 or omitted prior to the execution of this Agreement. (“Plaintiff’s Release.”) Plaintiff’s Release does
23 not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
24 unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits
25 that arose at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from,
26 or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
27 nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding
28 such different or additional facts or Plaintiff’s discovery of them.

1 c. **Plaintiff's Waiver of Rights Under California Civil Code § 1542.** For
2 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
3 and benefits, if any, of Section 1542 of the California Civil Code, which reads: A general release
4 does not extend to claims that the creditor or releasing party does not know or suspect to exist in his
5 or her favor at the time of executing the release, and that if known by him or her would have
6 materially affected his or her settlement with the debtor or Released Party.

7 d. **Release by Participating Class Members Who Are Not Aggrieved**
8 **Employees.** All Participating Class Members, on behalf of themselves and their respective former
9 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
10 Released Parties from all claims, losses, damages, liquidated damages, penalties, interest, liabilities,
11 causes of action, civil complaints, arbitration demands or suits which arise from the facts that were
12 alleged, or reasonably could have been alleged, based on the Class Period facts stated in the
13 Operative Complaint including violations for meal periods, rest breaks, unpaid overtime and
14 minimum wages, timely payment of wages, wage statements, waiting time penalties, unreimbursed
15 business expenses, penalties under the Private Attorneys General Act sections 2698, et seq., and
16 violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.). Except
17 as set forth in Section 5.2 of this Agreement, Participating Class Members do not release any other
18 claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment
19 and Housing Act, unemployment insurance, disability, social security, workers' compensation, or
20 claims based on facts occurring outside the Class Period.

21 e. **Release by Non-Participating Class Members Who Are Aggrieved**
22 **Employees.** All Non-Participating Class Members who are Aggrieved Employees are deemed to
23 release, on behalf of themselves and their respective former and present representatives, agents,
24 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
25 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
26 Period facts stated in the Operative Complaint and the PAGA Notice attached hereto as Exhibit B.

27 9. The Parties shall bear their own respective attorneys' fees and costs, except as
28 otherwise provided for in the Settlement Agreement and approved by the Court.

1 10. The Court finds that the Gross Settlement Amount, the Net Settlement Amount, and
2 the methodology used to calculate individual settlement payments to Participating Class Members
3 and Aggrieved Employees are fair and reasonable. The Court thus authorizes the Administrator to
4 pay settlement allocations in accordance with the terms of the Settlement Agreement. Defendant shall
5 pay into a common fund a total of \$588,203.36¹ (the “Gross Settlement Amount”) to resolve the
6 Action. Defendant shall fund the Gross Settlement Amount, and also fund the amounts necessary to
7 fully pay the employer’s share of payroll taxes on the wage portion of Individual Class Payments, as
8 calculated by the Administrator, by transmitting the funds to the Administrator no later than 60 days
9 of receipt of notice of the Final Order. Payments to Settlement Class Members and Aggrieved
10 Employees shall be distributed within 14 calendar days after funding and in accordance with the
11 terms of the Settlement Agreement.

12 11. A total amount of \$40,000.00 shall be allocated to resolution of the Released PAGA
13 Claims under the Private Attorneys General Act of 2004 (“PAGA”), and distributed as follows: 25%
14 (\$10,000.00) to Aggrieved Employees and 75% (\$30,000.00) to the LWDA. The LWDA’s claims
15 for the Released PAGA Claims are hereby extinguished.

16 12. The Court confirms the appointment of Plaintiff as the Class Representative. In
17 addition to any recovery that Plaintiff is eligible to receive under the Settlement Agreement as a Class
18 Member, the Court approves and orders a service payment in the amount of \$6,000.00 from the Gross
19 Settlement Amount to Plaintiff for his role and service as the Class Representative, for the risks and
20 work attendant to that role, and for his general release of claims, both known and unknown.

21 13. The Court confirms the appointment of Moon Law Group, PC as Class Counsel, as
22 they are experienced in wage and hour class action litigation, have no apparent conflicts of interest
23 with Plaintiff or other Class Members, and have adequately represented Class interests. The Court
24 approves and orders the payment to Class Counsel from the Gross Settlement Amount for reasonable
25 attorneys’ fees not to exceed 33 and 1/3% of the Gross Settlement Amount (\$196,067.79), as well as
26 \$14,782.28 for reimbursement of litigation costs actually incurred. The Court finds that the fees and
27

28 ¹ The Court notes that the escalator clause under paragraph 8 of the Settlement Agreement
was triggered, and that Defendant agreed to increase the Gross Settlement Amount accordingly.

1 costs amounts are reasonable in light of the benefits provided to the Class.

2 14. The Court confirms the appointment of ILYM Group, Inc. as the Administrator, who
3 has fulfilled its initial notice and reporting duties owed under the Settlement Agreement. The Court
4 approves and orders the payment of \$9,950.00 from the Gross Settlement Amount to ILYM Group,
5 Inc. for the costs of settlement administration.

6 15. In accordance with California Rule of Court 3.771(b), notice of this Final Order and
7 concurrently filed Final Judgment will be given to the Class by the Administrator who will post
8 the Order and Judgment on a website maintained by the Administrator, the address of which was
9 provided to Class Members in the Notice, for a period of not less than 90 calendar days after entry.

10 16. This Final Order and concurrently filed Final Judgment are intended to be a final
11 disposition of the Action in its entirety and are intended to be immediately appealable.

12 17. The obligations set forth in the Settlement Agreement are deemed part of this Final
13 Order and concurrently filed Final Judgment, and the Parties are ordered to carry out the Settlement
14 Agreement according to its terms and provisions.

15 18. Following entry of this Final Order and concurrently filed Final Judgment, and
16 without affecting the finality thereof, the Court shall retain jurisdiction over the Parties, the Action,
17 and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii)
18 addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are
19 permitted by law.

20 19. The Settlement Agreement is finally approved but is not an admission by Defendant
21 of the validity of any claims in this Action, or of any wrongdoing by Defendant or of any violation
22 of law. Neither the Settlement Agreement nor any related document shall be offered or received in
23 evidence in any civil, criminal, or administrative action or proceeding other than such proceedings
24 as may be necessary to consummate or enforce the Settlement.

25 20. The Court sets a Non-Appearance Hearing (Case Review) re: Distribution on
26 R. v. AGI, 2024 at ___:___ a.m./p.m. in Department 12. Class Counsel are ordered to
27 file a final report and declaration by the Administrator regarding settlement distribution no later
28 than R. v. AGI. No appearance is required at the Case Review if the

1 Administrator's declaration filed prior to the hearing reports that all the distributions under the
2 Settlement Agreement are complete.

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IT IS SO ORDERED.

DATE: 11/02/2023



A handwritten signature in cursive script that reads "Carolyn B. Kuhl".

Carolyn B. Kuhl / Judge

Honorable Carolyn B. Kuhl
Judge of the Superior Court, Los Angeles County

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880, Los Angeles, California 90017. On October 10, 2023, I served the foregoing document described as:

[PROPOSED] FINAL ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

X by E-mailing ___ the original X a true copy to the following:

Freeman Mathis & Gary, LLP
Mary Planchet, Esq. (mary.planchet@fmglaw.com)
John Rubiner, Esq. (jrubiner@fmglaw.com)
550 South Hope Street, 22nd Floor
Los Angeles, CA 90071
Phone: (213) 615-7000
Fax: (213) 615-7100

Attorney for Defendant Arya Ice Cream Distributing Company, Inc.

BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE.**

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

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

Janelle Jickain _____
Name

Signature 