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Clerk of the Superior Court

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By: S. Goodrich, Deputy

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (SBN 287811)
2 *david@tomorrowlaw.com*
Jeffrey D. Klein (SBN 297296)
3 *jeff@tomorrowlaw.com*
Vedang J. Patel (SBN 328647)
4 *vedang@tomorrowlaw.com*
8484 Wilshire Boulevard, Suite 500
5 Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705
6

7 Attorneys for Plaintiff, MAITE MOLINA and
on behalf of herself and all others similarly situated and aggrieved
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN DIEGO**

11 MAITE MOLINA, an individual and on behalf
of all others similarly situated,

12 Plaintiff,

13 v.

14 RESER'S FINE FOODS, INC., an Oregon
corporation; and DOES I through 100,
15 inclusive,

16 Defendants.
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CASE NO.: 37-2021-00013052-CU-OECTL

[Assigned to the Hon. Eddie C. Sturgeon in
Dept. C-67]

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFYING CLASS FOR
SETTLEMENT PURPOSES ONLY

20 This Court, having considered the Motion of plaintiff Maite Molina ("Plaintiff") for
21 Preliminary Approval of the Class Action Settlement and Provisional Class Certification for
22 Settlement Purposes Only ("Motion for Preliminary Approval"), the Declarations of David D.
23 Bibiyan, Plaintiff, and Sean Hartranft, the Stipulation for Class Action and Representative Action
24 Settlement (the "Settlement Agreement"), the Notice of Proposed Class Action Settlement ("Class
25 Notice"), and the other documents submitted in support of the Motion for Preliminary Approval,
26 hereby **ORDERS, ADJUDGES AND DECREES THAT:**

27 I. The definitions set out in the Settlement Agreement, attached as Exhibit "1" to the
28 Declaration of David D. Bibiyan, are incorporated by reference into this Order; all terms defined

1 therein shall have the same meaning in this Order.

2 2. The Court certifies the following settlement class for the purpose of settlement only:
3 all current and former non-exempt, hourly-paid employees who worked for defendant Reser's Fine
4 Foods, Inc. ("Defendant") at any time from March 24, 2020 through October 26, 2021 ("Class
5 Period") in California ("Class Members"). The Court finds, for Settlement purposes only, that the
6 Class meets the requirements for certification under California Code of Civil Procedure § 382 in
7 that: (1) the Class is so numerous that joinder is impractical; (2) there are questions of law and fact
8 that are common to all Class Members which predominate over individualized issues; (3) Plaintiff's
9 claims are typical of the claims of the Class; (4) Plaintiff and Class Counsel will fairly and
10 adequately protect the interests of the Class; and (5) a class action is superior to other available
11 methods for the fair and efficient adjudication of the controversy.

12 3. The Court preliminarily appoints named plaintiff Maite Molina as Class
13 Representative and David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law Group, P.C. as Class
14 Counsel.

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

27 5. The Court, approves, as to form and content, the Class Notice that has been submitted
28 herewith as Exhibit "A" to the Settlement Agreement.

1 6. The Court directs the mailing of the Class Notice by first-class mail to the Class
2 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
3 that dissemination of the Class Notice set forth in the Settlement Agreement complies with the
4 requirements of law and appears to be the best notice practicable under the circumstances.

5 7. The Court hereby preliminarily approves the definition and disposition of the Gross
6 Settlement Amount of \$300,000.00, which is inclusive of: attorneys' fees not to exceed thirty-five
7 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
8 Agreement, amounts to \$105,000.00, in addition to actual costs incurred not to exceed \$20,000.00;
9 an incentive award of \$7,500.00 to Plaintiff; costs of settlement administration of no more than
10 \$10,990.00; and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of
11 \$20,000.00, of which \$15,000.00 (75%) will be paid to the Labor and Workforce Development
12 Agency ("LWDA") and \$5,000.00 to "Aggrieved Employees", defined as Class Members working
13 for Defendant during the period from March 29, 2020 through October 26, 2021 ("PAGA Period"),
14 as non-exempt, hourly-paid employees.

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

17 9. Within ten (10) business days after the final approval of the Settlement, the
18 Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by
19 Defendant. Defendant shall pay the Gross Settlement Amount and Employer Taxes within seven
20 (7) calendar days after receiving the final accounting from the Settlement Administrator.

21 10. Class Member's "Workweeks" shall mean the number of weeks that a Settlement
22 Class Member was employed by Defendant, using hire dates, re-hire dates, and termination dates,
23 as applicable, in a non-exempt, hourly position during the Class Period.

24 11. The Settlement is based on Defendant's representation that there are no more than
25 26,920 Workweeks during the Class Period. In the event the number of Workweeks worked
26 increases by more than 5%, or 1,346 workweeks worked, then the Gross Settlement Amount shall
27 be increased proportionally by the Workweeks in excess of 26,920 multiplied by the Workweek
28 Value. The Workweek Value shall be calculated by dividing the Gross Settlement Amount by

1 26,920. The Parties agree that the workweek value amounts to and the settlement amounts to \$11.14
2 per Workweek ($\$300,000 / 26,920$ Workweeks). Thus, for example, should there be 30,000
3 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by
4 $\$34,311.20$. ($(30,000 \text{ Workweeks} - 26,920 \text{ Workweeks}) \times \$11.14/\text{workweek}$).

5 12. The Court deems ILYM Group, Inc. ("ILYM") the Settlement Administrator, and
6 payment of administrative costs, not to exceed \$10,990.00, out of the Gross Settlement Amount for
7 services to be rendered by ILYM on behalf of the class.

8 13. The Court directs Defendant to, within fourteen (14) calendar days of this Order,
9 provide the Settlement Administrator with the "Class List" for Class Members. The Class List will
10 include for each Settlement Class Member, his or her: (1) name; (2) last known address(es) currently
11 in Defendant's possession, custody, or control; (3) last known telephone number(s) currently in
12 Defendant's possession, custody, or control; (4) last known Social Security Number(s) in
13 Defendant's possession, custody, or control; and (5) the dates of employment (i.e., hire dates, and,
14 if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member; and (6)
15 any other relevant information needed to calculate the Individual Settlement Payments.

16 14. Because Social Security Numbers are included in the Class List, the Settlement
17 Administrator shall maintain the Class List in confidence, and shall only access and use the list to
18 administer the settlement in conformity with the Court's orders.

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

25 16. Within seven (7) calendar days of receiving the Class List from Defendant and
26 confirming contact information, the Settlement Administrator shall mail the Class Notice, in English
27 and Spanish, to the Settlement Class Members, via first-class regular U.S. Mail, using the most
28 current mailing address information available.

1 17. The deadline by which Class Members may dispute the number of Workweeks
2 worked, and the deadline by which Class Members may opt out or object, shall be forty-five (45)
3 days from the date of the mailing of the Class Notice, unless the Class Member had their Class
4 Notice re-mailed. Class Members who are re-mailed a Class Notice shall have fifteen (15) calendar
5 days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is
6 later, in which to postmark a Request for Exclusion, objection, or to dispute the information
7 provided in the Class Notice. This shall be known as the "Response Deadline."

8 18. The Class Notice instructs Settlement Class Members on how to exclude themselves
9 from the Settlement Class. Any Settlement Class Member may request exclusion from (i.e., "opt
10 out" of) the Settlement by mailing a written request to be excluded from the Settlement (the "Request
11 for Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
12 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
13 Member's Social Security Number; (3) the Class Member's signature; and (4) the following
14 statement: "Please exclude me from the Settlement Class in the *Molina v. Reser's Fine Food Inc.,*
15 *et al.* matter" or a statement of similar meaning. The date of the postmark on the return mailing
16 envelope receipt confirmation will be the exclusive means to determine whether a Request for
17 Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the Settlement
18 Administrator, who will certify jointly to Class Counsel and counsel for Defendant the Requests for
19 Exclusion that were timely submitted.

20 19. Any Class Member who does not submit a timely and valid Request for Exclusion
21 shall be deemed a "Participating Class Member" and be bound by the terms of the Settlement,
22 including the releases provide therein.

23 20. Settlement Class Members will have an opportunity to dispute the information
24 provided in their Class Notice (the "Workweek Dispute"). Any such disputes must be mailed to the
25 Settlement Administrator by the Settlement Class Member, postmarked on or before the Response
26 Deadline. To the extent Class Members dispute the number of Workweeks to which they have been
27 credited or the amount of their Individual Settlement Payment, Class Members may produce
28 evidence to the Settlement Administrator showing that such information is inaccurate. Absent

1 evidence rebutting Defendant's records, Defendant's records may be presumed determinative.
2 However, if a Class Member produces evidence to the contrary, the Settlement Administrator will
3 evaluate the evidence submitted by the Class Member and will make the final decision as to the
4 merits of the dispute. All disputes will be decided within seven (7) business days of the Response
5 Deadline.

6 21. Only Settlement Class Members who do not opt out of the Settlement (i.e.,
7 Participating Class Members) may object to the Settlement. In order for any Settlement Class
8 Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing a
9 written objection to the Settlement Administrator at the address or phone number provided on the
10 Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy
11 of the Objection forthwith to Class Counsel and Defendant's Counsel and attach the same to the
12 declaration it provides to Class Counsel, which Class Counsel shall file with Plaintiff's Motion for
13 Final Approval of the Settlement. The Objection should set forth in writing: (1) the Objector's
14 name; (2) the Objector's address; (3) the last four digits of the Objector's Social Security Number;
15 (4) the Objector's signature; (5) a statement of whether the Objector plans to appear at the Final
16 Approval Hearing; and (6) the reason(s) for the Objection, along with whatever legal authority, if
17 any, the Objector asserts in support of the Objection. At no time will any of the Parties or their
18 counsel or anyone acting at their request seek to solicit or otherwise encourage Class Members to
19 submit written objections to this Stipulation of Settlement or appeal from the Court's final Order.
20 Class Counsel will not represent any Class Members with respect to any such objections to this
21 Settlement. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
22 will remain a member of the Settlement Class and if the Court approves this Agreement, the
23 Settlement Class Member will be bound by the terms of the Settlement in the same way and to the
24 same extent as a Settlement Class Member who does not object. The date of mailing of the Class
25 Notice to the objecting Settlement Class Member shall be conclusively determined according to the
26 records of the Settlement Administrator. Settlement Class Members need not object in writing to
27 be heard at the Final Approval Hearing; they may object or comment in person at the hearing at their
28 own expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with

1 the Court up to five (5) court days before the Final Approval Hearing.

2 22. Participating Class Members may (though are not required to) appear at the Final
3 Approval hearing, either in person or through the objector's own counsel. The failure to file and
4 serve a written objection does not waive a Participating Class Member's right to appear at and make
5 an oral objection at the Final Approval hearing.

6 23. If a Settlement Class Members submits both an Objection and a Request for
7 Exclusion, the Request for Exclusion will control, and the Objection will be void.

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

13 25. All papers filed in support of final approval, including supporting documents for
14 attorneys' fees and costs, shall be filed by Oct. 24, 2022.

15 26. A Final Approval Hearing shall be held with the Court on Oct. 31, 2022 at
16 8:30 : 9 m. in Department "C-67" of the above-entitled Court to determine: (1) whether the
17 proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court;
18 (2) the amount of attorneys' fees and costs to award Class Counsel; (3) the amount of incentive
19 award to the Class Representatives; (4) the amount to be paid to the Settlement Administrator; and
20 (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

21 27. No more than seven (7) calendar days after payment by Defendant of the Gross
22 Settlement Amount, as well as payment by Defendant of the Employer Taxes, or as soon thereafter
23 as practicable, the Settlement Administrator shall distribute all payments due under the Settlement,
24 including Individual Settlement Payments to Participating Class Members, Individual PAGA
25 Payments to Aggrieved Employees, Court-approved payments for the Service Award to Plaintiff,
26 attorneys' fees and litigation costs and expenses to Class Counsel, approved settlement
27 administration costs to the Settlement Administrator, and the LWDA Payment to the LWDA.


28 28. Individual Settlement Payment and Individual PAGA Payment checks shall remain

1 valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance.
2 Within seven (7) calendar days after expiration of the 180-day period, checks for such payments
3 shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or
4 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The
5 Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384,
6 shall be transmitted as follows: to Legal Aid at Work, Located at 180 Montgomery St., Suite 600,
7 San Francisco, California 94104 for use in San Diego County. The Settlement Administrator shall
8 prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and
9 the report shall be presented to the Court by Class Counsel along with a proposed amended judgment
10 that is consistent with the provisions of Code of Civil Procedure section 384.

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

16
17 **IT IS SO ORDERED.**

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19 Dated: June 27, 2022



Judge of the Superior Court
Eddie C. Sturgeon, Judge

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