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FILED
Superior Court of California
County of Los Angeles
07/22/2022
Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Morales Deputy

Attorneys for Plaintiff ADAM PIERCE ANTOINE,
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

ADAM PIERCE ANTOINE, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

PINKY BEVERLY HILLS, LLC, a California
limited liability company; KEN TODD, an
individual; LISA VANDERPUMP, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 19STCV44856
[Assigned for all purposes to the Hon.
Lawrence Riff in Dept. 7]

**FIRST AMENDED [~~PROPOSED~~] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY**

1 This Court, having considered the Motion of Plaintiff Adam Pierce Antoine (“Plaintiff” or
2 “Mr. Antoine”) for Preliminary Approval of Class and Representative Action Settlement and
3 Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”),
4 the Declaration of David D. Bibiyan, the Joint Stipulation Re: Class Action and Representative
5 Action Settlement (the “Settlement Agreement”), the Notice of Proposed Class Action Settlement
6 (“Class Notice”), and other documents submitted in support of the Motion for Preliminary Approval,
7 hereby **ORDERS, ADJUDGES AND DECREES THAT:**

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

10 2. This Order will go into effect on August 19, 2022.

11 3. The Court certifies the following settlement class for the purpose of settlement only:
12 all current and former non-exempt, hourly-paid employees who worked for defendant Pinky Beverly
13 Hills, LLC (“Pinky”) from December 15, 2015 through the date upon which the Court grants
14 preliminary approval (“Class Period”) in California (“Class Members”).

15 4. The Court preliminarily appoints Plaintiff as Class Representative, and David D.
16 Bibiyan and Diego Aviles, of Bibiyan Law Group, P.C. as Class Counsel.

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

1 6. The Court approves, as to form and content, the Class Notice that has been submitted
2 herewith.

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

7 8. The Court hereby preliminarily approves the definition and disposition of the Gross
8 Settlement Amount of \$250,000, which is inclusive of attorneys' fees up to thirty-five (35) percent
9 of the Gross Settlement Amount, (which, unless escalated as set forth herein, amounts to
10 \$87,500.00), in addition to actual costs up of to \$25,000; an enhancement award of \$7,500.00 for
11 Plaintiff; costs of claims administration of approximately \$7,915.90; and PAGA penalties in the
12 amount of \$10,000.00, of which \$7,500 (75%) will be paid to the LWDA and \$2,500.00 (25%) will
13 be paid to Aggrieved Employees (*i.e.*, Class Members working in non-exempt, hourly-paid roles
14 during the PAGA Period whether or not they opt out). The PAGA Period means the period from
15 December 16, 2018, through the date upon which the Court grants preliminary approval. The Gross
16 Settlement Amount expressly excludes Employer Taxes, which will be paid separately and apart by
17 defendants Pink and Ken Todd (collectively, "Defendants") on the wages portion of the Settlement
18 Amount.

19 9. Defendants represent that there are no more than 7,445 Covered Workweeks
20 worked during the Class Period by Class Members at the time of the mediation. In the event the
21 number of Covered Workweeks increases by more than 5%, or 372 Covered Workweeks then the
22 Gross Settlement Amount shall be increased proportionally by the Covered Workweek Value. The
23 Covered Workweek Value shall be calculated by dividing the Gross Settlement Amount
24 (\$250,000.00) by 7,445, which amounts to a Covered Workweek Value of \$33.57. Thus, for
25 example, should there be 8,000 Covered Workweeks in the Class Period, then the Gross Settlement
26 Amount shall be increased by \$18,631.35. (8,000 Covered Workweeks - 7,445 Covered Workweeks
27 x \$33.57/Covered Workweek.) In no circumstance will the Gross Settlement Amount be reduced.

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1 10. The Court deems ILYM Group, Inc., (“ILYM”) the Settlement Administrator, and
2 approves payment of administrative costs, not to exceed \$7,915.90, out of the Gross Settlement
3 Amount for services to be rendered by ILYM on behalf of the class.

4 11. The Court directs Defendants to, no later than August 26, 2022, provide the
5 Settlement Administrator with the “Class List” for Class Members providing the following
6 information for each Class Member: (1) full name; (2) last known address(es); (3) last known
7 telephone number(s); (4) Social Security Number; and (5) dates of employment for each Class
8 Member. The Settlement Administrator shall perform an address search using the United States
9 Postal Service National Change of Address (“NCOA”) database and update the addresses contained
10 on the Class List with the newly-found addresses, if any.

11 12. By September 2, 2022, the Settlement Administrator shall mail the Class Notice in
12 English and Spanish to the Class Members via first-class regular U.S. Mail using the most current
13 mailing address information available. Prior to mailing the Notice to each Class Member, the
14 Settlement Administrator shall undertake reasonable address verification measures so as to update
15 the last known address for each Class Member. To the extent that this process yields an updated
16 address, that updated address shall replace the last known address and be treated as the new last
17 known address for purposes of this Settlement, and for subsequent mailings. The Settlement
18 Administrator shall maintain a Class List with continuously updated contact information for the
19 Class Members, and digital copies of all the Settlement Administrator’s records evidencing the
20 giving of notice to any Class Member, for at least four (4) years from the Effective Final Settlement
21 Date. Such information shall be available to Class Counsel and Defendants’ Counsel upon request.

22 13. “Response Deadline” means the sixty (60) calendar days after the Settlement
23 Administrator initially mails the Notice to Class Members and the last date on which Class Members
24 may timely submit a Request for Exclusion, written Objection, or Workweeks dispute. The
25 Response Deadline is November 1, 2022.

26 14. If a Class Notice from the initial notice mailing is returned as undeliverable, the
27 Settlement Administrator will attempt to obtain a current address for the Class Member to whom
28 the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned

1 Class Notice, by: (1) contacting the Class Member by phone, if possible, and (2) undertaking skip
2 tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly
3 re-mail the Class Notice to the Class Member. If a Class Member's notice is re-mailed, the Class
4 Member shall have fourteen (14) calendar days from the re-mailing, or sixty (60) days from the date
5 of the initial mailing, whichever is later, in which to postmark a Request for Exclusion or written
6 objection.

7 15. Any Class Member may request exclusion from (i.e., "opt out" of) the Settlement by
8 mailing, e-mailing, or faxing a written request to be excluded from the Settlement ("Request for
9 Exclusion") to the Settlement Administrator, with a verifiable send and/or postmark date on or
10 before the Response Deadline. To be valid, a Request for Exclusion must include the Class
11 Member's name, social security number and signature and the following statement or something to
12 its effect: "Please exclude me from the Settlement Class in the *Antoine v. Pinky Beverly Hills, LLC,*
13 *et al.* matter" or a statement of similar meaning. The Settlement Administrator shall immediately
14 provide copies of all Requests for Exclusion to Class Counsel and Defendants' Counsel and shall
15 report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in
16 advance of the Final Approval Hearing. Any Class Member who requests exclusion using this
17 procedure will not be entitled to receive any payment from the Settlement and will not be bound by
18 the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any
19 Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid
20 Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to
21 the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval
22 of the Settlement is granted. A Class Member cannot submit both a Request for Exclusion and an
23 objection. If a Class Member submits an objection and a Request for Exclusion, the Request for
24 Exclusion will control, and the Objection will be void. Class Members who submit a valid Request
25 for Exclusion will still be deemed Aggrieved Employees (if applicable), will still receive their *pro*
26 *rata* share of the PAGA Payment, and will be bound by any release of claims under PAGA related
27 to the Released Claims.

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1 16. Only Class Members who do not opt out of the Settlement (*i.e.*, Participating Class
2 Members) may object regarding the Settlement. The deadline for filing objections to any of the
3 terms of the settlement shall be by the Response Deadline. Any Class Member who wishes to object
4 to the Settlement in writing must mail, e-mail, or fax a written objection to the Settlement
5 Administrator, who will email a copy of the objection to Class Counsel and counsel for Defendants,
6 at the address or phone number provided on the Class Notice no later than the Response Deadline.

7 17. All written objections will be submitted to the Court by attachment to the Declaration
8 of the Settlement Administrator submitted in support of Plaintiff’s Motion for Final Approval. The
9 objection should set forth in writing: (1) the objector’s full name, address, telephone number and
10 last four digits of his or her Social Security Number; (2) include the case name and number; (3)
11 clearly state that the Class Member objects to the Settlement; (4) if the Class Member is represented
12 by counsel, including said counsel’s name and contact information; and (5) be mailed to the
13 Settlement Administrator, postmarked by the Response Deadline. If a Settlement Class Member
14 objects regarding this Settlement, the Settlement Class Member will remain a member of the
15 Settlement Class and if the Court approves this Agreement, the Class Member will be bound by the
16 terms of the Settlement in the same way and to the same extent as a Class Member who does not
17 object. The date of mailing of the Class Notice to the objecting or commenting Class Member shall
18 be conclusively determined according to the records of the Settlement Administrator. Class
19 Members do not need to object in writing to be heard at, or object/comment to the Settlement, at the
20 Final Approval Hearing.

21 18. By November 8, 2022, the Settlement Administrator shall provide counsel for the
22 Parties with a declaration attesting to the completion of the notice process, including the number of
23 attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well
24 as the identities, number of, and copies of all Requests for Exclusion and written objections received
25 by the Settlement Administrator.

26 19. Class Members must notify the Settlement Administrator no later than the Response
27 Deadline if the Settlement Class Member disputes the accuracy of the number of workweeks as set
28 forth on his or her Class Notice (“Workweek Dispute”). If a Class Member fails to timely dispute

1 the number of workweeks attributed to him or her in conformity with the instructions in the Class
2 Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim
3 to any additional settlement payment based on different data.

4 20. Defendants shall pay the Gross Settlement Amount to the Settlement Administrator
5 within three (3) business days after final approval. In addition, as part of the final payment,
6 Defendants shall include Defendants' share of taxes owed on the wages portion of the Settlement
7 (*i.e.*, Employer Taxes), which shall be determined by the Settlement Administrator. Individual
8 Settlement Payments and Individual PAGA Payments shall be paid exclusively from the Qualified
9 Settlement Account pursuant to the settlement formula set forth in the Settlement Agreement and
10 shall be mailed within five (5) business days of the Effective Date of the Settlement, as the same is
11 defined in the Settlement Agreement, provided that the Settlement Administrator has provided the
12 Parties with an accounting of the amounts to be paid by Defendants pursuant to the terms of this
13 Settlement.

14 21. Any checks from this distribution that are not cashed by Participating Class Members
15 within one-hundred-eighty (180) calendar days from the date of the mailing of the checks shall be
16 cancelled within seven (days) after the expiration of the 180-day period. Checks for such payments
17 shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or
18 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The
19 Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384,
20 shall be transmitted as follows: to Legal Aid at Work, located at, 180 Montgomery St., Suite 600,
21 San Francisco, California 94104 for use in Los Angeles County.

22 22. All papers filed in support of final approval, including supporting documents for
23 attorneys' fees and costs, shall be filed by October 24, 2022.

24 23. A final approval hearing shall be held with the Court on November 16, 2022 at 10:00
25 a.m. in Department 7 of the above-entitled Court to determine: (1) whether the proposed settlement
26 is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of
27 attorneys' fees and costs to award Class Counsel; (3) the amount of incentive award to the Class
28

1 Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the amount to be
2 apportioned to PAGA and/or paid to the LWDA.

3 24. Class Counsel and counsel for Defendants shall file any responses to any written
4 objections submitted to the Court within five (5) calendar days of the hearing on the Motion for
5 Final Approval.

6 25. In the event the settlement does not become effective in accordance with the terms
7 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
8 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
9 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.
10 The Parties will be free to assert any claim or defense that could have been asserted at the time of
11 entry of the Settlement Agreement.

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13 **IT IS SO ORDERED.**

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16 Dated: _____ R | AGG, 2022

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A handwritten signature in black ink, appearing to read "K. Freeman", is written over a horizontal line.

Kenneth R. Freeman / Judge
Judge of the Superior Court

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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 not a party to the within action; my business address is 8484 Wilshire Blvd., Suite 500, Beverly Hills, California 91211.

On July 15, 2022, pursuant to Court Order, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY** to be served by electronic transmission via Case Anywhere to the following recipients:

Jesse M. Caryl
Bent Caryl & Kroll, LLP
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jcaryl@bcklegal.com

Counsel for Defendants Pinky Beverly Hills, LLC, Ken Todd, and Lisa Vanderpump

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

Executed on July 15, 2022, at Beverly Hills, California.

/s/ Emanuel Munguia
Emanuel Munguia