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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DANIEL LUDLOW, ET AL.,

Plaintiff,

v.

FLOWERS FOODS, INC., FLOWERS
BAKERIES, LLC, and FLOWERS
FINANCE, LLC,

Defendants.

and

JOSE MACIEL, an individual, and
MACIEL DISTRIBUTION, INC., a
California corporation, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

FLOWERS FOODS, INC., a Georgia
corporation; FLOWERS BAKERIES,
LLC, a Georgia limited liability company,
FLOWERS FINANCE, LLC, a Delaware
limited liability company,

Defendants.

Case No. ~~3~~ 18-cv-01190-JO-JLB

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

Date: October 25, 2023

Time: 8:30 a.m.

Courtroom: 4C

Judge: Hon. Jinsook Ohta

Magistrate: Hon. Jill L. Burkhardt

Complaint Filed: June 6, 2018

Final Pretrial Conf.: Not Set

Case No. 3:20-cv-02059-JO-JLB

1 Daniel Ludlow, William Lancaster, and Jose Maciel (collectively referred to
2 as “Class Representatives” or “Plaintiffs”), on behalf of themselves and any
3 corporation or business entity through which they operated, and on behalf of each
4 of the Settlement Class Members, and Flowers Foods, Inc. (“Flowers Foods”),
5 Flowers Bakeries, LLC, and Flowers Finance, LLC (collectively, “Defendants”),
6 along with Flowers Baking Co. of Henderson, LLC and Flowers Baking Co. of
7 Modesto, LLC, have entered into a Class Action Settlement Agreement and Release
8 (“Settlement Agreement”)¹ after extensive arms-length settlement negotiations. The
9 Parties have applied, pursuant to Federal Rule of Civil Procedure 23(e) and the Fair
10 Labor Standards Act, for an order preliminarily approving the settlement of this
11 Action upon the terms and conditions set forth in the Settlement Agreement; and for
12 an order consolidating the *Maciel* Private Attorney General’s Act (“PAGA”) claim
13 into this Action. Having reviewed and considered the Parties’ Joint Motion for
14 Preliminary Approval, the Settlement Agreement, and accompanying Exhibits, the
15 Court finds that the Settlement Agreement is sufficient to warrant notice of the
16 Settlement to Class Members and a full fairness hearing on the approval of the
17 Settlement.

18 NOW, THEREFORE, IT IS HEREBY ORDERED:

19 **A. Jurisdiction and Preliminary Findings**

20 1. Jurisdiction. The Court has jurisdiction over the Parties, has subject-
21 matter jurisdiction over the federal law claims, and has supplemental jurisdiction
22 over the state-law claims.

23 2. Preliminary Findings. The Court, having conducted a preliminary
24 assessment of the fairness, reasonableness, and adequacy of the Settlement
25 Agreement, hereby finds that the settlement falls within the range of reasonableness
26 meriting further proceedings and approval and dissemination of the Class Settlement
27

28 ¹ All capitalized terms have the meanings set forth and defined in the Parties’
Settlement Agreement.

1 Notices to the Class Members. The Court hereby preliminarily approves the
2 Settlement Agreement, and the terms and conditions of the settlement set forth
3 therein, subject to further consideration at the Fairness Hearing described below.

4 3. Conditional Certification of Rule 23(b)(2) Class. The Court hereby
5 approves conditional class certification of a non-opt-out class under Rule 23(b)(2)
6 for settlement purposes. The Rule 23(b)(2) class definition is as follows: All
7 California distributors of Flowers Baking Company of Henderson, LLC or of
8 Flowers Baking Company of Modesto, LLC who are operating under a Distributor
9 Agreement, either individually or on behalf of his or her corporation or business
10 entity as of the date of preliminary approval. For the purposes of settlement only, the
11 Court conditionally certifies the Rule 23(b)(2) class as defined and conditionally
12 finds that it meets the requirements of Rules 23(a) and Rule 23(b)(2) of the Federal
13 Rules of Civil Procedure.

14 4. Consolidation of PAGA Claim and First Amended Complaint. The
15 Court hereby approves consolidation of the *Maciel* PAGA claim into this Action for
16 settlement purposes only by deeming filed the *Maciel* federal First Amended
17 Complaint in the Action (attached to the Declaration of Alex Tomasevic in support
18 of preliminary approval as “Exhibit 2”).

19 5. Answer to First Amended Complaint. Defendants’ Answer to the
20 *Maciel* federal Complaint shall stand as Defendants’ Answer for purposes of the
21 *Maciel* federal First Amended Complaint, and Defendants shall be under no further
22 obligation to file an additional Answer to the *Maciel* federal First Amended
23 Complaint in the Action. Defendants’ Answer in the *Maciel* PAGA Action shall
24 serve as the Answer for purposes of the consolidated *Maciel* PAGA claim in the
25 *Maciel* federal First Amended Complaint and Defendants shall be under no further
26 obligation to file an additional Answer as to these claims. Should the Court not fully
27 and finally approve the Settlement, Defendants reserve their rights to file an
28 Amended Answer and raise any and all additional defenses at that time.

1 6. Fairness Hearing. Pursuant to Rule 23(e) of the Federal Rules of Civil
2 Procedure, the Court will hold a Fairness Hearing on March 1, 2024 at 9 a.m., for
3 the purposes of:

4 (a) Determining whether the settlement on the terms and conditions
5 set forth in the Settlement Agreement is fair, just, reasonable, and adequate to the
6 Settlement Class and should be finally approved by the Court;

7 (b) Considering the application of Class Counsel for an award of
8 Attorneys' Fees and Costs, as provided for in the Settlement Agreement;

9 (c) Considering the application of the Named Plaintiffs for Service
10 Awards, as provided for in the Settlement Agreement;

11 (d) Reviewing objections, if any, to the Settlement;

12 (e) Determining the validity of Exclusion Requests, if any, and
13 exclude from the Settlement Class those Persons who validly and timely opted out;

14 (f) Determining the validity of any Withdrawal Requests, if any,
15 and allowing those Settlement Class Members who validly withdraw to withdraw
16 themselves from the Settlement Class;

17 (g) Considering whether the Court should enter an order finally
18 approving the settlement in this matter, and the settlement of the *Maciel* PAGA
19 claim; and

20 (h) Ruling upon such other matters as the Court may deem
21 necessary and appropriate.

22 7. Modifications to Settlement. Should it become necessary, the Parties
23 may modify the Settlement Agreement or the *Maciel* PAGA settlement agreement
24 prior to the Fairness Hearing as long as such modifications do not materially change
25 the terms and conditions of the Settlement provided thereunder. The Court may
26 approve the Settlement Agreement and *Maciel* PAGA settlement agreement with
27 any such modifications as may be agreed to by the Parties, if appropriate, without
28 further notice to the Settlement Class.

1 8. Objections to Settlement. Any Settlement Class Member who intends to
2 object to any aspect of the Settlement, including the requested Attorney's Fees and
3 Costs, or Service Award, must do so on or before the Exclusion/Withdrawal and
4 Objection Date. To object, the Settlement Class Member must file a written
5 objection with the Court on or before the Exclusion/Withdrawal and Objection Date
6 and serve it via first-class mail on Class Counsel and Defendants' Counsel and
7 include: the name, address, telephone number, and email address of the Person
8 objecting and, if represented by counsel, of his/her counsel. An objecting Settlement
9 Class Member must state, specifically and in writing, all objections and the basis for
10 any such objections, and include all supporting papers, and must state whether
11 he/she intends to appear at the Fairness Hearing, either with or without counsel. The
12 Parties may take discovery on an expedited basis regarding the objection from the
13 objector and related third parties.

14 9. Response to Objections. Any response to timely, completed objections
15 must be filed with the Court and on all Counsel of Record and served no later than
16 ten (10) days after service of the objections.

17 10. Motion for Final Approval. The motion for the Final Approval of
18 Settlement shall also be filed no later than seven (7) days prior to the Fairness
19 Hearing.

20 11. Appearance at Fairness Hearing. Attendance at the Fairness Hearing is
21 not necessary; however, any person wishing to be heard orally with respect to
22 approval of the Settlement, the application for Attorneys' Fees and Costs, or the
23 application for Named Plaintiffs' Service Awards, are required to provide to the
24 Court written notice of their intention to appear at the Fairness Hearing no later than
25 the Objection Date as set forth in the Class Settlement Notice. Persons who do not
26 intend to oppose the Settlement, Attorneys' Fees and Costs or the Service Award
27 need not take any action to indicate their approval.

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1 12. Exclusion/Withdrawal and Objection Date. The deadline for requesting
2 exclusion/withdrawal from the Settlement or filing objections to the Settlement is 60
3 days after the notice is mailed. Any FLSA Plaintiff who requests exclusion from
4 this Settlement must, to be excluded, also withdraw by contacting Class Counsel
5 requesting to withdraw within 60 days after the notice is mailed. Alternatively, a
6 valid Exclusion Request will concurrently serve as a notice of intent to withdraw.

7 13. Employment Showing of Interest Form. The deadline for submission of
8 the Employment Showing of Interest Form is 60 days after the notice is mailed.
9 Reminder notices shall be sent to any Class Members who have not returned the
10 Showing of Interest Form within 45 days after they are mailed.

11 14. Application for Award of Attorneys' Fees. All papers in support of the
12 Settlement Agreement and any application for an award of Attorneys' Fees and
13 Expenses and/or Service Award must be filed with the Court no later than 10 days
14 before the deadline for requesting exclusion/withdrawal from the Settlement or
15 filing objections.

16 **B. The Court Approves the Form and Method of Class Notices**

17 1. Class Settlement Notices. The Court approves for distribution in
18 accordance with the Settlement Agreement, as to form and content, the proposed
19 Class Settlement Notice, which are Exhibits 1A, 1B, 2A, 2B, and 3 to the Settlement
20 Agreement. The Court finds that the Class Settlement Notice is reasonably
21 calculated to apprise Class Members (including FLSA Plaintiffs) of the pendency of
22 the Action, their right to object to the proposed Settlement, opt out of and withdraw
23 from the Settlement Class, or participate in the Settlement.

24 2. Distribution of Class Notices. The Court finds that the distribution of
25 the Class Settlement Notices substantially in the manner and form set forth in the
26 Settlement Agreement and Exhibits 1A, 1B, 2A, 2B, and 3 meet the requirements of
27 Federal Rule of Civil Procedure 23 and due process, and the standards for fairness
28 and reasonableness under the FLSA, and is the best notice practicable under the

1 circumstances and constitutes due and sufficient notice to all Persons entitled
2 thereto.

3 3. Appointment of Settlement Administrator. The Court appoints Rust
4 Consulting as the Settlement Administrator.

5 4. Dissemination of Class Notices. The Court directs the Settlement
6 Administrator to disseminate Class Notices, instructions on how to make elections
7 under the Settlement Agreement, instructions on how to access the Settlement
8 Agreement and any Exhibits thereto, and such other information, if any, as may be
9 of assistance to Settlement Class Members or required under the Settlement
10 Agreement.

11 (a) The Settlement Administrator is ordered to cause the Class
12 Settlement Notice to be disseminated to Class Members no later than fourteen (14)
13 days after entry of this Order (“Settlement Class Notice Deadline”).

14 (b) The Settlement Administrator shall file, through Class Counsel,
15 with the Court proof of compliance with the Notice Program no later than five (5)
16 business days prior to the Fairness Hearing.

17 5. Appointment of Class Counsel. Consistent with the prior ruling on class
18 certification, the Court hereby appoints Shaun Markley, Alex Tomasevic, and Craig
19 Nicholas of the law firm of Nicholas & Tomasevic, LLP to serve as Class Counsel
20 for the Settlement Class Members.

21 **C. Procedure for Requesting Exclusion from the Settlement Class**

22 1. Exclusion and Withdrawal Request Procedure. Within the confines of
23 Federal Rule

24 of Civil Procedure 23, any person falling within the definition of the Class may,
25 upon his or her request, be excluded from the Settlement Class. Any such Person
26 must submit a timely Exclusion Request, to Class Counsel and Defense Counsel,
27 post-marked on or before the Exclusion and Objection Date, as set forth in the Class
28 Settlement Notice. Exclusion Requests purportedly filed on behalf of multiple

1 persons or classes of persons are prohibited and will be deemed to be void. Any
2 FLSA Plaintiff who requests to be excluded from the Settlement Class shall also be
3 deemed to have withdrawn for purposes of their FLSA claim. Similarly, any FLSA
4 Plaintiff who withdraws from the settlement shall be deemed to have requested to
5 be excluded from the Settlement Class. As discussed in Section C(4) below,
6 however, the injunctive relief set forth in Section 7 of the Settlement Agreement
7 applies to all Current Distributor Class Members and FLSA Plaintiffs (whether they
8 have previously opted out or subsequently exclude themselves and withdraw or
9 not).

10 2. Effect of Invalid Exclusion Request. Any Class Member who does not
11 send a completed, signed Exclusion Request to Class Counsel post-marked on or
12 before the Exclusion and Objection Date will be deemed to be a member of the
13 Settlement Class and will be bound by all further orders of the Court in this Action
14 and by the terms of the Settlement, if finally approved by the Court.

15 3. Deadline for List of Exclusions. Class Counsel shall provide counsel
16 for Defendants with a list of all timely Exclusion Requests within five (5) business
17 days after the Exclusion and Objection Date.

18 4. Effect of Valid Exclusion Request and Withdrawal on Injunctive
19 Relief. Pursuant to Section 7.1 of the Settlement Agreement, the injunctive relief
20 agreed to by the Parties in Section 7 of the Settlement Agreement shall apply to all
21 Current California Distributors (including all Current Distributor Class Members
22 and FLSA Plaintiffs whether they have previously opted out or subsequently
23 exclude themselves and withdraw or not).

24 **D. Miscellaneous Provisions**

25 1. No Further Sales: As set forth in the Settlement Agreement, there shall
26 be no further sales or attempted sales of distribution rights by Class Members in
27 order to effectuate the terms of this Settlement.

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