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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CRUZ**

11 BRYAN MACIAS SILVA, individually, and
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 DRISCOLL'S, INC., a California corporation;
15 and DOES 1 through 10, inclusive,

16 Defendants.

Case No.: 22CV00147

[Honorable Timothy Schmal, Department 10]

**AMENDED [PROPOSED] ORDER
GRANTING PLAINTIFF BRYAN MACIAS
SILVA'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT**

PRELIMINARY APPROVAL HEARING

Date: January 23, 2025

Time: 8:30 a.m.

Dept: 10

Complaint Filed: January 19, 2022

Trial Date: Not Set

1 The Court has before it the unopposed Motion for Preliminary Approval of Class and PAGA
2 Action Settlement (“Motion”) of Plaintiff Bryan Macias Silva (“Plaintiff”). Having reviewed the
3 Notice of Motion, Motion, Declaration of Kane Moon, Declaration of Plaintiff Bryan Macias Silva,
4 and Joint Stipulation and Settlement Agreement of Class and PAGA Action Claims (“Settlement”)
5 between Plaintiff and Defendant Driscoll’s, Inc. (“Defendant”), and good cause appearing, **THE**
6 **COURT HEREBY ORDERS AS FOLLOWS:**

7 1. The Settlement, which is attached to the Declaration of Kane Moon in Support of
8 Plaintiff Bryan Macias Silva’s Motion for Preliminary Approval of Class and PAGA Action
9 Settlement as **Exhibit 3**, appears to meet the requirements for preliminary approval under California
10 Code of Civil Procedure section 382 because it appears to be fair, adequate, and reasonable. **The**
11 **Settlement appears to be fair, adequate, and reasonable because it appears to be a product of**
12 **serious, informed, and non-collusive negotiations between Plaintiff and Defendant (together, the**
13 **“Parties”) and has no obvious deficiencies.**

14 2. The Settlement states that Defendant will pay a Gross Settlement Amount of
15 \$1,500,000.00, in addition to payment of the employer’s portion of payroll taxes on all wage
16 allocations, and that the Gross Settlement Amount will be used to pay all payments contemplated by
17 the Settlement without exception, including, the Individual Settlement Payments to Qualified Class
18 Members and/or Aggrieved Employees; the PAGA Settlement Amount of \$150,000.00, with seventy-
19 five percent (75%), or \$112,500.00 allocated to the LWDA (the “LWDA Payment”), and twenty-five
20 percent (25%), or \$37,500.00 allocated to the Aggrieved Employees; Attorneys’ Fees in an amount not
21 to exceed one-third of the Gross Settlement Amount, or \$500,000.00; Attorneys’ Costs in an amount
22 not to exceed \$22,500.00; the Class/PAGA Representative Service Payment in an amount not to
23 exceed \$7,500.00; and Settlement Administration Costs in an amount not to exceed \$30,000.00.
24 **Settlement, ¶¶ 42-47. These terms appear to fall within the range of reasonableness of a settlement**
25 **which could ultimately be granted final approval by this Court.**

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1 3. The Settlement Class includes all persons who worked for any Defendant in California
2 as an hourly, non-exempt employee at any time during the Class Settlement Covered Period.
3 *Settlement*, ¶ 40. The Class Settlement Covered Period means the time period from January 19, 2018,
4 through the date of Preliminary Approval, or pursuant to the Escalator Clause set out in Paragraph 58
5 of the Settlement. *Settlement*, ¶ 9. **The Class is conditionally certified for settlement purposes only**
6 **because it appears to meet the requirements for certification under California Code of Civil**
7 **Procedure section 382.** In particular, (1) the Class is ascertainable and so numerous that joinder is
8 impractical; (2) the Class shares common questions of law and fact, which predominate over
9 individual issues; (3) Plaintiff’s claims are typical of the claims of the Class; (4) Plaintiff and Class
10 Counsel will fairly and adequately protect the interests of the Class; and (5) a class action is superior to
11 other available methods for the fair and efficient adjudication of the controversy. The Court notes that
12 Class Members who do not request exclusion from the Settlement may object thereto and raise their
13 objections at the Final Fairness Hearing on the Settlement.

14 4. Aggrieved Employees include all persons who worked for any Defendant in California
15 as an hourly, non-exempt employee at any time during the PAGA Settlement Covered Period.
16 *Settlement*, ¶¶ 2, 26. The PAGA Settlement Covered Period means the time period from January 11,
17 2021, through the date of Preliminary Approval, or pursuant to the Escalator Clause set out in
18 Paragraph 58 of the Settlement. *Settlement*, ¶ 25. The Aggrieved Employees are approved for
19 settlement purposes only.

20 5. Upon the Effective Date, and subject to Defendant’s full payment of the Gross
21 Settlement Amount, Plaintiff, Qualified Class Members, and Aggrieved Employees shall release the
22 Released Parties as follows (*Settlement*, ¶¶ 75-77):

- 23 a) “Released Parties” means Defendant Driscoll’s, Inc., as well as each and all of
24 its past and present direct or indirect parents, subsidiaries, predecessors,
25 successors, and affiliated corporations, entities, divisions, general and limited
26 partners, joint venturers and affiliates, and each of their respective current and
27 former directors, officers, managers, employees, principals, members, agents,
28 managing agents, insurers, reinsurers, shareholders (both legal and beneficial),

1 attorneys, advisors, representatives, general partners, limited partners, joint
2 venturers, and affiliated companies, and each of their respective executors,
3 predecessors, successors, assigns, trustees and legal representatives, and any
4 individual or entity which could be jointly liable with Defendant Driscoll's,
5 Inc. *Settlement*, ¶ 34.

6 b) Release by Plaintiff. In addition to the claims being released by all Qualified
7 Class Members and the PAGA Settlement Group, Plaintiff will release and
8 forever discharge the Released Parties, to the fullest extent permitted by law,
9 of and from any and all claims, known and unknown, asserted and not
10 asserted, which Plaintiff has or may have against the Released Parties as of the
11 date of Plaintiff's execution of this Settlement Agreement, including
12 Plaintiff's individual PAGA claims. To the extent the foregoing release is a
13 release to which Section 1542 of the California Civil Code or similar
14 provisions of other applicable law may apply, Plaintiff expressly waives any
15 and all rights and benefits conferred by the provisions of Section 1542 of the
16 California Civil Code or similar provisions of applicable law. *Settlement*, ¶ 75.

17 c) Release by Qualified Class Members. Qualified Class Members shall release
18 the Released Parties from all Released Class Claims by Qualified Class
19 Members. *Settlement*, ¶ 76. "Released Class Claims by Qualified Class
20 Members" means (i) all claims alleged in the Complaint, First Amended
21 Complaint, and/or Second Amended Complaint in the Action; (ii) all claims
22 alleged in any and all PAGA letters sent to the LWDA by Plaintiff during or
23 prior to the Action; and (iii) all claims which could have been alleged under
24 the same or similar facts, allegations, and/or claims alleged in the Action,
25 against Defendant and/or the Released Parties for work performed during the
26 Class Settlement Covered Period. *Settlement*, ¶¶ 32, *et seq.* The full, itemized
27 list of Released Class Claims is incorporated by reference herein. *Id.*
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1 d) Release by PAGA Settlement Group. All PAGA Settlement Group members,
2 including those who exclude themselves from the Class, shall release the
3 Released Parties from the Released PAGA Claims by the PAGA Settlement
4 Group. *Settlement*, ¶ 77. “Released PAGA Claims by the PAGA Settlement
5 Group” means (i) all claims for PAGA civil penalties alleged in the
6 Complaint, First Amended Complaint, and/or Second Amended Complaint in
7 the Action; (ii) all claims alleged in any and all PAGA letters sent to the
8 LWDA by Plaintiff during or prior to the Action; and/or (iii) all claims which
9 could have been alleged under the same or similar facts, allegations and/or
10 claims alleged in the Action, against Defendant and/or Released Parties.
11 *Settlement*, ¶ 33. The full, itemized list of Released PAGA Claims is
12 incorporated by reference herein. *Id.*

13 e) “Effective Date” means the latter of the following events: (i) five (5) calendar
14 days after the period for filing any appeal, writ, or other appellate proceeding
15 opposing Final Approval and Judgment has elapsed without any appeal, writ,
16 or other appellate proceeding having been filed, *i.e.*, 65 days from the date the
17 Court grants Final Approval and enters Judgment; or (ii) if any appeal, writ, or
18 other appellate proceeding opposing Final Approval has been filed within that
19 timeframe, five (5) business days after any appeal, writ, or other appellate
20 proceedings opposing the Settlement has been finally and conclusively
21 dismissed with no right to pursue further remedies or relief. The Effective
22 Date is a condition of performance of the obligations under this Settlement..
23 *Settlement*, ¶ 12.

24 **6. The Class Notice, attached to the Settlement as Exhibit A, is approved as to form**
25 **and content.**

26 7. The Class Representative appointed for this matter is Plaintiff Bryan Macias Silva.
27 *Settlement*, ¶ 7. The Class/PAGA Representative Service Payment, which is not to exceed \$7,500.00,
28 is preliminarily approved. *Settlement*, ¶ 8.

1 8. The Settlement Administrator appointed for this matter is APEX Class Action
2 Administration. *Settlement*, ¶ 39. The Settlement Administration Costs, which are not to exceed
3 \$30,000.00, are preliminarily approved. *Settlement*, ¶ 45.

4 9. Class Counsel appointed for this matter are Kane Moon, Allen Feghali, and Jacquelyne
5 VanEmmerik of Moon Law Group, P.C. *Settlement*, ¶ 4. Attorneys' Fees, which are not to exceed one-
6 third of the Gross Settlement Amount, or \$500,000.00, and Attorneys' Costs, which are not to exceed
7 \$30,000.00, are preliminarily approved. *Settlement*, ¶ 43.

8 10. To facilitate the administration of the Settlement pending Final Approval, the Court
9 hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits, or
10 administrative proceedings, including filing claims with the Division of Labor Standards
11 Enforcement of the California Department of Industrial Relations, regarding claims released by the
12 Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the
13 Settlement Administrator and the time for filing claims with the Settlement Administrator has lapsed.

14 11. Neither the Settlement nor any related document shall be offered or received in
15 evidence in any civil, criminal, or administrative action or proceeding other than such proceedings as
16 may be necessary to consummate or enforce the Settlement.

17 12. The Settlement is preliminarily approved but is not an admission by Defendant of the
18 validity of any claims in this Action or of any wrongdoing or violation of law by Defendant.

19 13. The obligations set forth in the Settlement are deemed part of this Order. The Parties
20 are to carry out the Settlement in accordance with its terms.

21 14. Pending further order of this Court, all proceedings in this Action, except those
22 contemplated herein and in the Settlement, are stayed.

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1 15. A Final Fairness Hearing on the question of whether the Settlement, Attorneys' Fees
 2 and Costs, and Class/PAGA Representative Service Payment should be finally approved as fair,
 3 adequate, and reasonable as to Qualified Class Members is hereby set in accordance with the following
 4 Implementation Schedule:

5 Defendant to deliver the Class List to the 6 Settlement Administrator	Within fourteen (14) calendar days of Preliminary Approval (<i>Settlement</i> , ¶ 51)
7 Settlement Administrator to mail the Class 8 Notice by First-Class U.S. Mail	Within fourteen (14) calendar days of receiving the Class List (<i>Settlement</i> , ¶ 52)
9 Response Deadline	Forty-five (45) calendar days from the initial mailing of the Class Notice 10 (<i>Settlement</i> , ¶ 36)
11 Deadline to file Motion for Final Approval	No later than sixteen (16) court days before the Final Fairness Hearing
12 Final Fairness Hearing	June 12, 2025, at 8:30 a.m., in 13 Department 10 of the Santa Cruz County 14 Superior Court

15 16. If any of the dates in the above schedule fall on a weekend, or bank or court holiday,
 16 the time to act shall be extended to the next business day.

17 **IT IS SO ORDERED.**

18
 19 DATE: _____

 20 Honorable Timothy Schmal
 21 Judge of the Santa Cruz County Superior Court

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 725 South Figueroa Street, 31st Floor
7 Los Angeles, California 90017. On January 24, 2025, I served the foregoing document described
8 as:

9 **AMENDED [PROPOSED] ORDER GRANTING PLAINTIFF BRYAN MACIAS
10 SILVA’S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA
11 ACTION SETTLEMENT**

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

13 Constance E. Norton (SBN 146365)
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Attorneys for Defendant, Driscoll’s, Inc.

29 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
30 California, by e-mail delivery on the parties listed herein at their most recent known
31 e-mail address or e-mail of record in this action.

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

34 Executed on January 24, 2025, at Los Angeles, California.

35 Janelle Jickain
36 Name

37 
38 Signature