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F I L E D
Superior Court of California
County of Butte
JUL 12 2023
Sharif Elmallah, Clerk
By ELK Deputy

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF BUTTE**

ANTHONY PENCA, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

SIERRA NEVADA BREWING CO., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21CV02883

Assigned for All Purposes to:
Honorable Tamara L. Mosbarger
Department 1

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: July 12, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 1

Complaint Filed: November 24, 2021
FAC Filed: December 5, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Anthony Penca and
2 Christopher Davidson's ("Plaintiffs") Motion for Final Approval of Class Action Settlement, and
3 considering the papers submitted in support of the motion, including the Joint Stipulation and
4 Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS**
5 **AND ORDERS:**

6 Plaintiffs and Defendant Sierra Nevada Brewing Co. ("Defendant") entered the
7 Settlement Agreement on or about December 2022 to settle this lawsuit.

8 The Court entered an order dated February 1, 2023 preliminarily approving the settlement
9 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
11 providing Class Members with an opportunity to object to the Settlement or exclude themselves
12 from the Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on July 12, 2023 to determine whether to give
14 final approval to the Settlement of this lawsuit.

15 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
16 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
17 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
18 in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
20 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
21 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all current and former hourly-paid, non-
26 exempt employees (whether hired directly or through staffing agency People 2.0 Global LLC dba
27 Allevity Recruiting & Staffing fka Anderson and Associates) of Defendant within the State of
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1 California at any time during the period from October 17, 2017, through January 31, 2023
2 (“Class,” “Class Members,” and “Class Period”). There are 1,999 Class Members who did not
3 submit valid and timely requests to exclude themselves from this Settlement (“Participating
4 Class Members”).¹

5 4. Adequacy of Representation. Class Counsel fully and adequately represented the
6 Class for the purposes of entering and implementing the Settlement and satisfied the
7 requirements of Code of Civil Procedure section 382.

8 5. Notice Packet. The Court finds the Notice of Class Action and PAGA Settlement
9 (“Notice”) and the Election Not to Participate In (“Opt Out” From) Class Action Settlement
10 (“Exclusion Form”) (collectively, the “Notice Packet”) and its distribution to Class Members
11 were implemented pursuant to the Settlement and this Court’s Preliminary Approval Order. The
12 Court also finds the Notice Packet:

13 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
14 pendency of this lawsuit; (ii) material terms and provisions of the Settlement Agreement and
15 their rights; (iii) their right to object to any aspect of the Settlement Agreement; (iv) their right to
16 exclude themselves from the Settlement Agreement; (v) their right to receive settlement
17 payments; (vi) their right to appear at the Final Approval Hearing; and (vii) binding effect of the
18 orders and judgment in this lawsuit on all Participating Class Members;

19 b. constitutes notice that fully satisfied the requirements of Code of Civil
20 Procedure section 382, California Rule of Court 3.769, and due process;

21 c. constitutes the best practicable notice to Class Members under the
22 circumstances of this lawsuit; and

23 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

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26 ¹ The Settlement Administrator mailed Notice Packets to 2,027 Class Members and
27 received twenty-eight (28) requests for exclusion. Consequently, there are 1,999 Participating
28 Class Members.

1 6. Final Settlement Approval. The terms and provisions of the Settlement
2 Agreement have been entered into good faith and are the product of arm's-length negotiations by
3 experienced counsel who have done a meaningful investigation of the claims. The Settlement
4 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
5 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
6 Settlement Agreement according to its terms and provisions.

7 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
8 Order and Judgment are binding on Plaintiffs, Participating Class Members, Eligible Aggrieved
9 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
10 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
11 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
12 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
13 that were or could have been raised in this lawsuit and are encompassed by the Released Claims
14 and Private Attorneys General Act of 2004 ("PAGA") Released Claims. The Settlement
15 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
16 Class Members who have submitted timely requests for exclusion.

17 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
18 any action to enforce the terms and provisions of the Settlement Agreement.

19 9. Release of Claims. Upon Defendant's fulfillment of its payment obligations
20 under section III (J)(9)(a) of the Agreement, Plaintiffs and the Participating Class Members will
21 fully and finally release and discharge the Released Parties from the Released Claims.

22 a. Effect of PAGA Settlement. Upon Defendant's fulfillment of its payment
23 obligations under section III (J)(9)(a) of the Agreement, Plaintiffs, California
24 Labor and Workforce Development Agency ("LWDA"), and any other
25 representative, proxy, or agent thereof, including, but not limited to, the Eligible
26 Aggrieved Employees, will fully and finally release and discharge the Released
27 Parties from the PAGA Released Claims.

1 b. Plaintiffs' Release of Claims and General Release. Upon Defendant's fulfillment
2 of its payment obligations under section III (J)(9)(a) of the Agreement, in
3 exchange for the Class Representative Enhancement Payments to each Plaintiff
4 and in recognition of their work and efforts in obtaining the benefits for the Class
5 and undertaking the risk of paying litigation costs if this matter had not
6 successfully resolved, Plaintiffs provide a general release of claims for themselves
7 and any respective spouse, heirs, successors, and assigns.

8 c. Released Parties. The Released Parties include Defendant and its affiliated
9 companies (including People 2.0 Global LLC dba Allevity Recruiting & Staffing
10 fka Anderson and Associates ("Allevity")) and their respective parent companies,
11 subsidiaries, affiliates, shareholders, members, owners, agents (including, without
12 limitation, any investment bankers, accountants, insurers, reinsurers, attorneys
13 and any past, present or future officers, directors, and employees), predecessors,
14 successors, and assigns.

15 10. Class Representative Enhancement Payments. The Court finds the Class
16 Representative Enhancement Payments of \$10,000, to be paid by Defendant to each Plaintiff out
17 of the Gross Settlement Amount (totaling \$20,000), to be reasonable and appropriate. The Class
18 Representative Enhancement Payment is to be paid pursuant to the terms and provisions set forth
19 in the Settlement Agreement.

20 a. The rationale for making enhancement payments is class representatives should
21 be compensated for the expense and risk they incurred in conferring a benefit on
22 the Class. Criteria courts consider include: (1) risk to the class representatives in
23 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
24 effort spent by the class representatives; (4) duration of the litigation; and (5)
25 personal benefit (or lack thereof) enjoyed by class representatives.

26 b. The Court reviewed Plaintiffs' declaration outlining their involvement. Given the
27 risks inherent in the services as the class representatives, duration of the case and
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1 time involved, and benefits created for the Class, the Court approves the payment
2 of the Class Representative Enhancement Payments of \$10,000 to each Plaintiff.

3 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
4 of \$1,159,000, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to
5 be reasonable and appropriate. In addition, the Court finds the Cost Award as reimbursement for
6 actual litigation costs incurred of \$17,428.21, to be paid by Defendant to Class Counsel out of
7 the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be
8 paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall
9 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
10 incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members.
11 Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or
12 disbursements incurred by Plaintiffs or Class Members in connection with or related in any
13 manner to this lawsuit, Settlement Agreement, settlement administration, and/or Released Claims
14 and PAGA Released Claims.

15 a. The Court has an independent right and responsibility to review the Attorney Fee
16 Award and only award so much as it determines reasonable. (See *Garabedian v.*
17 *Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The
18 Attorney Fee Award of \$1,159,000 is thirty-eight (38%) of the common fund
19 created for the benefit of the Class and is supported by use of the percentage-fee
20 method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480,
21 504.) Considering the exceptional results achieved, financial risk undertaken,
22 novel and difficult nature of this litigation, skills required, percentage fees award
23 in previous and other cases, and contingent fees charged in the marketplace, the
24 Court finds the Attorney Fee Award is consistent with the marketplace, is
25 reasonable, and is approved.

26 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
27 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
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1 seek reimbursement of up to \$25,000 in litigation costs. The Court finds Class
2 Counsel expended \$17,428.21 in litigation costs, and such costs were reasonable.
3 Thus, the Court approves the payment of the Cost Award of \$17,428.21 from the
4 common fund for the reimbursement of Class Counsel's litigation costs.

5 12. Administration Costs. The Court finds Administration Costs of \$17,500, to be
6 paid by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be
7 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
8 provisions set forth in the Settlement Agreement.

9 a. The Court reviewed the declaration of Kaylie O'Connor from CPT Group, Inc.,
10 the Court-approved Settlement Administrator. The Court finds notice was
11 provided to the Class pursuant to the Preliminary Approval Order, constitutes the
12 best practicable notice to the Class, and satisfied due process. Thus, the Court
13 approves the payment of the Administration Costs of \$17,500 for the Settlement
14 Administrator's services in administering the Settlement.

15 13. PAGA Payment. The Court finds the PAGA Payment of \$100,000, seventy-five
16 percent (75%) of which (\$75,000) will be paid to the LWDA out of the Gross Settlement
17 Amount and twenty-five percent (25%) of which (\$25,000) shall be distributed to Eligible
18 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment
19 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

20 14. Funding the Settlement. Within thirty (30) calendar days of the Effective Final
21 Settlement Date, Defendant shall deposit the \$2,712,416 needed to fund the Gross Settlement
22 Amount and any employer's share of payroll taxes into the Qualified Settlement Fund. Within
23 fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator
24 shall calculate and pay all payments due under the Settlement.

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1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
3 Settlement was the product of arm's-length negotiations following extensive litigation,
4 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
5 Lynn S. Frank, an experienced and well-respected mediator.

6 a. The fairness of the Settlement is demonstrated by there being no objections to and
7 only twenty-eight (28) requests for exclusion from the Settlement.

8 b. The fairness of the Settlement is further illustrated by the gross *average*
9 Individual Settlement Share being approximately \$708.45, and the gross *highest*
10 Individual Settlement Share being about \$4,512.42.

11 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved
12 Employees must cash or deposit their settlement checks within one hundred eighty (180)
13 calendar days after the checks are mailed to them. Uncashed settlement checks will be canceled
14 and paid to the *cy pres* recipient Community Legal Information Center in Chico, California.

15 17. Modification of Settlement Agreement. The Participating Class Members are
16 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
17 modifications of the Settlement Agreement by an express written instrument signed by counsel
18 for all Parties or their successors-in-interest. Such amendments or modifications shall be
19 consistent with this Order and Judgment and cannot limit the rights of Participating Class
20 Members under the Settlement Agreement.

21 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
22 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
23 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
24 and for any other necessary purpose, including, without limitation:

25 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
26 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
27 arise out of the Settlement or this Order and Judgment;

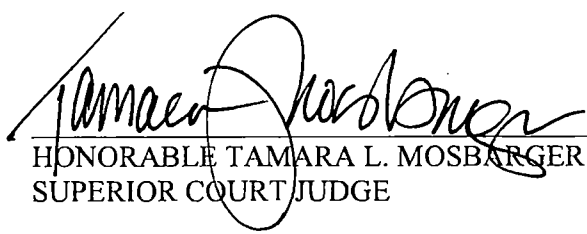
- 1 b. entering such additional orders as may be necessary or appropriate to protect or
2 effectuate this Order and Judgment approving the Settlement, and permanently
3 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
4 the fair and orderly administration of the Settlement; and
5 c. entering any other necessary or appropriate orders to protect and effectuate this
6 Court's retention of continuing jurisdiction.

7 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
8 Award, and Class Representative Enhancement Payments is GRANTED. The Settlement
9 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

10 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
11 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
12 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
13 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
14 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
15 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
16 THE JUDGMENT THEREON.

17 IT IS SO ORDERED.

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19 DATED: 7/12/2023


HONORABLE TAMARA L. MOSBARGER
SUPERIOR COURT JUDGE