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THE HONORABLE MICHAEL K. RYAN  
NOTING DATE: JUNE 13, 2023

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING AT SEATTLE**

**ANDREW WESTPHAL**, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

**ELLIOTT'S OYSTER HOUSE, LLC** a  
Washington Limited Liability Company, **E3  
CO, LP DBA E3 RESTAURANT GROUP**,  
a Washington Limited Partnership, and **DOES  
1-10**, inclusive,

Defendants.

CASE NO. 22-2-00876-8 SEA

~~PROPOSED~~ ORDER:

- (1) GRANTING CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF SETTLEMENT;
- (2) APPROVING NOTICE AND RELATED MATERIALS;
- (3) APPOINTING SETTLEMENT ADMINISTRATOR; AND
- (4) SCHEDULING FINAL APPROVAL HEARING

~~PROPOSED~~ ORDER



ACKERMANN & TILAJEF, P.C.  
2602 NORTH PROCTOR STREET, SUITE 205  
TACOMA, WA 98406  
P: (253) 625-7720 F: (253) 310-0635

1 The motion filed by Plaintiff Andrew Westphal ("Plaintiff"), on behalf of himself and all  
2 others similarly situated, for preliminary approval of his class action settlement with Elliott's  
3 Oyster House, LLC and E3 CO, LP dba E3 Restaurant Group (together, "Defendant" or  
4 "Elliott's"), seeking conditional certification of a settlement class in this action, preliminary  
5 approval of the Parties' proposed Settlement, approval of the notice to be sent to Proposed Class  
6 Members about the Settlement, and the setting of a date for the hearing on final approval of the  
7 Settlement came before the Court for consideration. The Court, having read and considered the  
8 papers on the motion, the arguments of counsel, and the law, and good cause appearing therefore,

9 **IT IS ORDERED:**

10 1. The following class of persons is certified as the Class in this action solely for the  
11 purposes of the Settlement:

12 All individuals who resided in Washington State and who worked for Elliott's  
13 Oyster House, LLC and/or E3 CO, LP dba E3 Restaurant Group as a non-exempt,  
14 hourly restaurant worker (including front of the house and/or back of the house  
15 positions) at an Elliott's Oyster House restaurant in Washington State at any time  
16 from January 18, 2019 through December 31, 2019 (the "Settlement Class Period").

16 2. The Proposed Class satisfies the requirements of a settlement class because the  
17 Proposed Class Members are readily ascertainable, and a well-defined community of interest exists  
18 in the questions of law and fact affecting the Parties. The Proposed Class is estimated to include  
19 227 individuals.

20 3. The Parties' Settlement Agreement (the "Settlement") (Decl. of Craig Ackermann  
21 in Support of Preliminary Approval, **Exhibit 1**) is granted preliminary approval as it meets the  
22 criteria for preliminary settlement approval. The Court finds that, given the potential defenses  
23 raised by Defendant, and the range of other comparable settlements that have received preliminary  
24 and final approval of other Washington state and federal courts, the Maximum Settlement Amount  
25 here of \$77,500 falls within the range of possible final approval as fair, adequate and reasonable,  
26 was the product of arm's-length and informed negotiations between the Parties, and appears to  
27 treat all Proposed Class Members fairly.

28 4. The Parties' proposed Notice of Settlement and notice plan is constitutionally sound

[PROPOSED] ORDER

1 because individual notices will be mailed to all Proposed Class Members whose identities are  
2 known to the Parties. The Notice of Settlement will be disseminated according to the notice  
3 procedure described in the Settlement and substantially in the form submitted by the Parties. To  
4 ensure that the Notice of Settlement reaches as many Proposed Class Members as possible, the  
5 Settlement Administrator will take the class data provided by the Parties (which will include each  
6 Proposed Class Member's name, last-known mailing address, telephone number, email address,  
7 and Social Security number) and update the addresses using the National Change of Address  
8 database. After doing so, the Settlement Administrator will mail the Notices of Settlement. If any  
9 of the Notices of Settlement are returned by the U.S. Postal Service as undeliverable (i.e., there is  
10 no forwarding address), the Settlement Administrator will perform "skip trace" address searches  
11 and will re-mail notices to Proposed Class Members for whom new addresses are provided or are  
12 found. Proof of distribution of the notice will be filed by the Parties at or prior to the final approval  
13 hearing. The Parties' proposed Notice of Settlement (Settlement, **Exhibit A**) is sufficient to inform  
14 Proposed Class Members of the terms of the Settlement, their rights under the Settlement  
15 (including, but not limited to, their right to participate in the Settlement by doing nothing, their  
16 right to object to the Settlement, or their right to request to be excluded from the Settlement), and  
17 the date and location of the final approval hearing. The Notice of Settlement further advises  
18 Proposed Class Members that, if they do not elect to exclude themselves from the Settlement, they  
19 will receive their pro-rata share of the Class Fund and will be bound by the release of claims in the  
20 Settlement Agreement<sup>1</sup> with respect to Defendant and the other Released Parties.<sup>2</sup> The Notice plan

21  
22 <sup>1</sup> The Released Claims are defined as any and all claims, whether known or unknown, that were brought or that could  
23 have been brought based on any facts alleged in the Case with respect to a failure to provide rest breaks or a failure to  
24 properly disclose automatic fees and/or pay employees all tips, service charges, and automatic fees. The Released  
25 Claims specifically include, but are not limited to, any claims arising out of or relating to any alleged failure to properly  
26 disclose any "Service Charge[s]" (as that phrase is defined in RCW 49.46.160(2)(c)), any failure to properly pay or  
27 distribute any tips, automatic fees, or service charges, any alleged missed, interrupted, shortened, untimely, unpaid,  
28 and/or non-compliant rest breaks, and any attendant claims for unpaid wages, overtime payments, premium payments,  
interest, exemplary damages, and attorney's fees and costs relating to any of the foregoing during the Settlement Class  
Period. S.A., §§ VI.1.s-t and VI.2.

<sup>2</sup> The Released Parties are defined as "Elliott's Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group, as well  
as each of their past, current, or future successors and assigns, together with each of their respective parent companies,  
subsidiaries, related or affiliated companies, members, shareholders, owners, officers, directors, employees, agents,  
attorneys, and insurers, along with any other individual or entity who could be jointly or severally liable for any of the  
claims alleged in the Case or released by the Settlement." See S.A., § VI.1.t.

[PROPOSED] ORDER



1 provides the best notice practicable and, therefore, is approved.

2 5. Any Proposed Class Member who wishes to object to the Settlement, including the  
3 Class Counsel requested attorneys' fees and/or litigation costs, has until 60 days after the mailing  
4 of the Notice of Settlement to submit a written objection, pursuant to the procedures set forth in  
5 the Notice of Settlement.

6 6. Any Proposed Class Member may opt-out of the Settlement by submitting a written  
7 request for exclusion from the Settlement no later than 60 days after the mailing of the Notice of  
8 Settlement, pursuant to the procedures set forth in the Notice of Settlement.

9 7. Any Proposed Class Member who does not timely submit a written objection that  
10 complies with the requirements in the Notice shall not be permitted to object or appear at the final  
11 approval hearing, shall be deemed to have waived and forfeited any objection at the final approval  
12 hearing, and shall be bound by all proceedings, orders and judgments of the Court. Any Proposed  
13 Class Member who wishes to be heard orally at the final approval hearing, either personally or  
14 through an attorney, must so state explicitly in the Proposed Class Member's written objection as  
15 described in the Notice of Settlement, or the Proposed Class Member will not be heard orally. Any  
16 objection that is not timely made shall be forever barred. Any attorney hired by a Proposed Class  
17 Member at that Proposed Class Member's expense for the purpose of making objections must file  
18 with the Clerk of the Court, and serve the Parties' counsel, a notice of appearance, within 60 days  
19 of the date of the Notice of Settlement.

20 8. The Court makes the following appointments: (1) Plaintiff Andrew Westphal as  
21 Class Representative; (2) Craig J. Ackermann, Brian Denlinger, Avi Kreitenberg, and Tatiana  
22 Hernandez as Class Counsel; and (3) CPT Group, Inc. as Settlement Administrator.

23 9. Defendant is directed to provide the Settlement Administrator with the class data,  
24 as specified by sections VI.4 and VI.7.b of the Settlement Agreement, no later than 30 days after  
25 the date of this Order.

26 10. The Settlement Administrator is directed to mail the approved Notice of Settlement  
27 by first-class regular U.S. mail to the Proposed Class Members no later than 35 days after the date  
28 of this Order, as specified by paragraphs VI.7.a and VI.8.c.1 of the Settlement Agreement.

[PROPOSED] ORDER  


1 11. A final hearing will be held on Dec. 1, 2023, at 11:00<sup>am.</sup> to determine whether  
2 the Settlement should be granted final approval as fair, reasonable, and adequate. The Court will  
3 hear all evidence and argument necessary to evaluate the Settlement and will consider the Class  
4 Representative's request for a Class Representative Service Award and Class Counsel's request  
5 for an Attorneys' Fees and Costs Award. Proposed Class Members and their counsel may oppose  
6 the Settlement and/or the motion for awards of the Class Representative Service Award, the Class  
7 Counsel Attorneys' Fees and Costs Award, if they so desire, as set forth in the Notice of Settlement.

8 12. Plaintiff's motion in support of final approval, including any request for an  
9 Attorneys' Fees and Costs Award, must be filed no later than 6 Court days before the final approval  
10 hearing. Any Proposed Class Member may appear at the final approval hearing in person or by his  
11 or her own attorney and show cause why the Court should not approve the Settlement, or object to  
12 the motion for awards of the Class Representative Service Award and/or the Attorneys' Fees and  
13 Costs Award.

14 13. Pending final determination of whether the Settlement should be approved,  
15 Plaintiff, all Proposed Class Members and any person or entity allegedly acting on behalf of  
16 Proposed Class Members, either directly, representatively or in any other capacity, are  
17 preliminarily enjoined from commencing or prosecuting against the released parties any action or  
18 proceeding in any court or other forum asserting any of the Released Claims. This injunction is  
19 necessary to protect and effectuate the Settlement, this Order, and the Court's flexibility and  
20 authority to enter judgment when appropriate and is ordered in aid of the Court's jurisdiction and  
21 to protect its judgments.

22 14. If final approval of the Settlement is not granted, the Parties shall be returned to the  
23 status quo ex ante, for all litigation purposes, as if no settlement had been negotiated or entered  
24 into; and thus, this Order and all other findings or stipulations regarding the Settlement shall be  
25 automatically void, vacated, and treated as if it was never filed.

26 15. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in  
27 connection with the administration of the Settlement which are not materially inconsistent with  
28 either this Order or the terms of the Settlement Agreement.

1           16. The Court reserves the right to continue the date of the final approval hearing  
2 without further notice to Proposed Class Members. The Court may approve or modify the  
3 Settlement without further notice to Proposed Class Members. The Court retains jurisdiction to  
4 consider all further matters arising out of or in connection with the Settlement. This Action is  
5 stayed until further ordered by this Court, except such actions and proceedings that may be  
6 necessary to implement the Settlement and this Order.

7  
8 **IT IS SO ORDERED.**

9 Date: 6-27-23

  
HONORABLE JUDGE MICHAEL K. RYAN  
SUPERIOR COURT OF KING COUNTY

12 Presented by:

13 ACKERMANN & TILAJEF, P.C.  
14 LAW OFFICE OF TATIANA HERNANDEZ,  
15 P.C.

JACKSON LEWIS P.C.

16 /s/Brian W. Denlinger

Craig Ackermann, WSBA #53330  
17 Brian W. Denlinger, WSBA #53177  
18 Tatiana Hernandez, WSBA #54446  
*Co-Counsel for Plaintiff and the Class*

16 /s/Peter H. Nohle

Peter H. Nohle, WSBA #35849  
*Attorney for Defendants*

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[PROPOSED] ORDER