

**FILED**  
KING COUNTY, WASHINGTON

DEC 01 2023

SUPERIOR COURT CLERK  
BY Disa Emerson  
DEPUTY

THE HONORABLE MICHAEL K. RYAN  
NOTING DATE: December 1, 2023 at 11:00 a.m.

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 AND FINAL JUDGMENT  
GRANTING FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
ATTORNEYS' FEES AND COSTS**

  
~~[PROPOSED]~~ ORDER AND FINAL JUDGMENT GRANTING  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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1                   **ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT**

2                   On December 1, 2023, the Court heard the unopposed motion of Plaintiff Andrew Westphal  
3 (“Plaintiff”), individually and on behalf of all others similarly situated, for Final Approval of Class  
4 Action Settlement with Elliott’s Oyster House, LLC and E3 CO, LLP dba E3 Restaurant Group  
5 (together, “Defendant”),<sup>1</sup> including Plaintiff’s motion for final approval of the Class  
6 Representative Service Payment, Class Counsel’s attorneys’ fees and litigation costs, and the  
7 settlement administrator’s fees.

8                   The Court has reviewed the Class Notice and related forms and the notice procedures that  
9 the Parties implemented in accordance with the Court’s Order on Plaintiff’s Motion for  
10 Preliminary Approval of the class action Settlement. The Court finds that Class Members have  
11 duly been given notice of the Settlement, the opportunity to contest the amount of Hours Worked  
12 specified on their Share Forms, the opportunity to exclude themselves from the Settlement, and/or  
13 to comment on or object to the Settlement or any of its terms. Having read and considered the  
14 Settlement, the papers filed in support of Plaintiff’s unopposed motion for final approval, and  
15 Plaintiff’s and Class Counsel’s papers requesting final approval of the Class Representative  
16 Service Award, Class Counsel’s attorneys’ fees and costs, and the settlement administrator’s fees,  
17 and the evidence and argument received by the Court on this motion, the Court GRANTS final  
18 approval of the Settlement and ORDERS AND MAKES THE FOLLOWING FINDINGS AND  
19 DETERMINATIONS:

20                   1.       All terms used in this Order and Final Judgment Granting Final Approval of Class  
21 Action Settlement and Attorneys’ Fees and Costs (the “Order”) shall have the same meanings  
22 given those terms in the parties’ Settlement Agreement (the “Settlement” or “Agreement”). A copy  
23 of the Settlement is attached as Exhibit 1 to the Declaration of Craig Ackermann in Support of the  
24 Motion for Preliminary Approval of Class Settlement and is made a part of this Order.

25                   2.       The Court is satisfied that CPT Group, Inc., which functioned as the Settlement  
26 Administrator, completed the distribution of the Class Notice and Share Form to the Class in a

27                   <sup>1</sup> Plaintiff and Defendant are referred to collectively as the “Parties.”

1 manner that is constitutionally sound. The Class Notice was mailed to all 227 Class Members, and  
2 226 Class Members (over 98%) actually received the Notice Packet advising them of the  
3 Settlement terms, their rights to opt-out, their rights to comment on or object to the Settlement,  
4 and their rights to appear at the Final Approval Hearing and be heard regarding approval of the  
5 Settlement. Adequate periods of time to respond and to act were provided by each of these  
6 procedures. The Settlement Administrator has advised that 227 Class Members were sent the Class  
7 Notice, no Class Members submitted written objections to the Settlement; no Class Members  
8 requested exclusion from the Settlement; and no Class Members submitted a statement of intention  
9 to appear at the Final Approval Hearing.

10 3. For settlement purposes only, the Court finally certifies the Class, as defined in the  
11 Court's June 1, 2023 Order Granting Conditional Certification of Settlement Class and Preliminary  
12 Approval of Settlement as follows:

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

17 4. The Court deems this definition sufficient solely for the purpose of Settlement. As  
18 reported by the Settlement Administrator, the Class consists of 227 Participating Class Members.

19 5. The Court appoints Plaintiff as Class Representative, and Craig J. Ackermann, Avi  
20 Kreitenberg, and Brian W. Denlinger of Ackermann & Tilajef, P.C., as well as Tatiana Hernandez,  
21 Law Office of Tatiana Hernandez, P.C., as adequate Class Counsel.

22 6. The terms of the Agreement, including the Gross Settlement Amount of \$77,500.00  
23 and the Individual Settlement Payments to the Participating Class Members, are fair, adequate,  
24 and reasonable to the Class and to each Class Member, and the Court grants final approval of the  
25 Settlement set forth in the Agreement. The Court orders the Parties to comply with and carry out  
26 all terms and provisions of the Settlement, to the extent that the terms thereunder do not contradict  
27

1 or conflict with this Order and Judgment, in which case the provisions of this Order and Judgment  
2 shall take precedence and supersede the Settlement.

3 7. As of the hearing date on December 1, 2023, Class Counsel reports that there are  
4 no objections to the Settlement filed or submitted, and no Class Members have requested exclusion  
5 from the Settlement.

6 8. The \$6,850.00 designated for payment to CPT Group, Inc., the Settlement  
7 Administrator, is fair and reasonable. The Court grants final approval of, and orders Defendant to  
8 make the payment to the Settlement Administrator in accordance with the Agreement. The  
9 difference in the amount of actual Settlement Administration fees from the requested amount will  
10 revert to net settlement amount.

11 9. The \$23,250.00 amount requested by Plaintiff and Class Counsel for Class  
12 Counsel's attorneys' fees, representing 30% of the Gross Settlement Amount, is fair and  
13 reasonable given the risk of non-certification of the class, Defendant's other defenses to the claims  
14 alleged, the high quality of Class Counsel's work, and the results obtained for the Class with no  
15 opt-outs and no objections to the Settlement. The Court grants final approval of, awards, and orders  
16 the Class Counsel Fees Payment to be made in accordance with the Agreement.

17 10. The \$4,042.30 requested by Plaintiff and Class Counsel for Class Counsel's  
18 litigation costs is fair, reasonable and equal to the amount expected to be incurred by Class  
19 Counsel. The \$4,042.30 requested is less than the \$5,000.00 amount contemplated by the  
20 Settlement Agreement and preliminary approved by this Court and noticed to the Class without  
21 objection. The Court grants final approval of, awards, and orders the Class Counsel cost  
22 reimbursement of \$4,042.30 be made in accordance with the Settlement Agreement.

23 11. The \$5,000.00 amount requested by the Class Representative for the Class  
24 Representative Payment is fair and reasonable. The Court grants final approval of, and orders that  
25 the Class Representative Payment be made in accordance with the Agreement.

26 12. Nothing in the Settlement or this Order purports to extinguish or waive Defendant's  
27 rights to continue to oppose the merits of the claims in this Action or class treatment of these

1 claims in this case if the Settlement fails to become Final or effective, or in any other case without  
2 limitation. The Settlement is not an admission by Defendant, nor is this Order and Judgment a  
3 finding of the validity of any allegations against Defendant in this proceeding or any wrongdoing  
4 by Defendant. Neither the Settlement nor this Order and Court Judgment is a finding that  
5 certification of the Class is proper for any purpose or proceeding other than for settlement  
6 purposes.

7 13. Since there were no requests for exclusion, all 227 Participating Class Members  
8 shall be bound by the Settlement and this Order, including the Released Claims<sup>2</sup> by Class Members  
9 in favor of Defendant and the other Released Parties<sup>3</sup> as set forth in the Agreement, and such Class  
10 Members are now permanently barred from prosecuting against Defendant and the other Released  
11 Parties any and all of the Released Claims by Class Members, as defined in the Agreement.

12 14. Plaintiff is bound to the general release of claims in favor of Defendant and the  
13 other Released Parties as set forth in the Agreement, and permanently barred from prosecuting  
14 against Defendant and the other Released Parties.

15 15. The Parties shall bear her, its, or their own respective attorneys' fees and costs  
16 except as otherwise provided in the Settlement.

17 16. Final Judgment is hereby entered in this matter based on this Order and the terms  
18 of the Settlement, which has now been finally approved.

19 17. The Court retains continuing jurisdiction over the Action and the Settlement solely

20 \_\_\_\_\_  
21 <sup>2</sup> The Released Claims are defined as “any and all claims, whether known or unknown, that were brought or that could  
22 have been brought based on any facts alleged in the Case with respect to a failure to provide rest breaks or a failure to  
23 properly disclose automatic fees and/or pay employees all tips, service charges, and automatic fees. The Released  
24 Claims specifically include, but are not limited to, any claims arising out of or relating to any alleged failure to  
25 properly disclose any “Service Charge[s]” (as that phrase is defined in RCW 49.46.160(2)(c)), any failure to properly  
26 pay or distribute any tips, automatic fees, or service charges, any alleged missed, interrupted, shortened, untimely,  
27 unpaid, 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.” See S.A.,  
§VI.1.s. See also SA §VI.2.

<sup>3</sup> The Released Parties are defined as “the named Defendants in the Case, 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 this Agreement.” See S.A.,  
§VI.1.t.

1 for purposes of (a) enforcing the Settlement Agreement, (b) addressing settlement administration  
2 matters, and (c) addressing such post-Judgment matters as may be appropriate under court rules or  
3 applicable law.

4 **IT IS SO ORDERED.**

5  
6 DATED: Dec 1, 2023

  
\_\_\_\_\_  
7 HONORABLE MICHAEL K. RYAN  
8 SUPERIOR COURT JUDGE OF KING COUNTY

9 Presented by:

10 ACKERMANN & TILAJEF, P.C.  
11 LAW OFFICE OF TATIANA HERNANDEZ, P.C.

12 /s/Brian W. Denlinger  
13 Brian W. Denlinger, WSBA #53177  
14 *Co-Counsel for Plaintiff and the Class*

15 JACKSON LEWIS P.C.

16 /s/Peter H. Nohle  
17 Peter H. Nohle, WSBA #35849  
18 *Attorney for Defendants*