

FILED

OCT 05 2018

Circuit Court
Multnomah County, Oregon

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Kevin Mehrens and Chris Roehm, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

Concept Entertainment-Six, LLC dba Grand
Central Restaurant and Bowling Lounge,

Defendant.

Case No. 17CV49816

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Plaintiffs Kevin Mehrens and Chris Roehm (collectively, "Representative Plaintiffs")
have filed a Motion for an Order Preliminarily Approving Class Action Settlement ("Motion").
Having reviewed the Motion and supporting materials, the Court determines and orders as
follows:

A. Counsel have advised the Court that the Parties have agreed, subject to final
approval by this Court following notice to the proposed Settlement Class and a hearing, to settle
this Action on the terms and conditions set forth in the Settlement Agreement and Release of
Claims (the "Agreement").

B. The Court has reviewed the Agreement, as well as the files, records, and
proceedings to date in this matter. The terms of the Agreement are hereby incorporated as
though fully set forth in this Order. Capitalized terms shall have the meanings attributed to them
in the Agreement.

C. Based upon preliminary examination, it appears to the Court that the Agreement
is sufficiently fair, reasonable, and adequate to warrant notice to the proposed Settlement Class;

1 that the Settlement Class should be certified for settlement purposes; and that the Court should
2 hold a hearing after notice to the Settlement Class to determine whether to enter a Settlement
3 Order and Final Judgment in this action, based upon that Agreement.

4 Based upon the foregoing, the Court finds and concludes as follows:

5 **1. Preliminary Approval of Proposed Settlement.** The Agreement, including all
6 exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. The Court finds that
7 (a) the Agreement resulted from extensive arm's-length negotiations between the Parties and
8 their counsel, and (b) the Agreement is sufficient to warrant notice thereof to members of the
9 Settlement Class and the Settlement Hearing described below.

10 **2. Class Certification for Settlement Purposes Only.**

11 (a) Pursuant to ORCP 32(A) the Court, for settlement purposes only,
12 conditionally certifies the following Settlement Class:

13 All Oregon consumers who during the period of July 1, 2016
14 through November 22, 2017, were charged a service charge at
Grand Central Restaurant and Bowling Lounge.

15 (b) In connection with the certification, the Court makes the following
16 preliminary findings:

17 (1) The Settlement Class satisfies ORCP 32(A)(1) because the
18 Settlement Class appears to be so numerous that joinder of all members is impracticable;

19 (2) The Settlement Class satisfies ORCP 32(A)(2) because there
20 appear to be questions of law or fact common to the Settlement Class;

21 (3) The Settlement Class satisfies ORCP 32(A)(3) because the claims
22 of the Representative Plaintiffs named in the caption appear to be typical of the claims being
23 resolved through the proposed settlement;

24 (4) The Settlement Class satisfies ORCP 32(A)(4) because the
25 Representative Plaintiffs appear to be capable of fairly and adequately protecting the interests of
26 the above-described Settlement Class in connection with the proposed settlement and because

1 counsel representing the Settlement Class are qualified, competent, and capable of prosecuting
2 this action on behalf of the Settlement Class.

3 (5) The Settlement Class satisfies the requirements of ORCP 32(A)(3)
4 because, for purposes of settlement approval and administration, common questions of law and
5 fact appear to predominate over questions affecting only individual Settlement Class Members
6 and because settlement with the above-described Settlement Class appears to be superior to other
7 available methods for the fair and efficient resolution of the claims of the Settlement Class. The
8 Settlement Class appears to be sufficiently cohesive to warrant settlement by representation.

9 (c) In making the foregoing findings, the Court has exercised its discretion in
10 conditionally certifying a Settlement Class.

11 **3. Representative Plaintiffs.** For settlement purposes only, the Court hereby
12 appoints Plaintiffs Kevin Mehrens and Chris Roehm as Representative Plaintiffs pursuant to
13 ORCP 32, and finds that, for settlement purposes only, Mr. Mehrens and Mr. Roehm have and
14 will fairly and adequately protect the interests of the Settlement Class.

15 **4. Class Counsel.** For settlement purposes only, the Court appoints Michael Fuller
16 of OlsenDaines and Kelly Jones of The Law Office of Kelly Jones as counsel for the Settlement
17 Class ("Class Counsel"). For purposes of these settlement approval proceedings, the Court finds
18 that Class Counsel is competent and capable of exercising their responsibilities as Class Counsel.

19 **5. Settlement Administrator.** The Court appoints CPT Group, Inc. as the Settlement
20 Administrator, which shall fulfill the Settlement Administration functions, duties, and
21 responsibilities of the Settlement Administrator as set forth in the Agreement and this Order.

22 **6. Settlement Hearing.** A final approval hearing (the "Settlement Hearing") shall be
23 held before this Court on February 15, 2019 at 1:30 p.m., as set forth in the Class Notice
24 (described in Paragraph 7 below), to determine whether the Agreement is fair, reasonable, and
25 adequate, and should be given final approval. Papers in support of final approval of the
26 Agreement and Class Counsel's application for an award of attorneys' fees and costs, and for a

1 Service Award to the Representative Plaintiffs (the "Fee Application") shall be filed with the
2 Court according to the schedule set forth in Paragraph 14, below. The Court may postpone,
3 adjourn, or continue the Settlement Hearing without further notice to the Settlement Class. After
4 the Settlement Hearing, the Court may enter a Settlement Order and Final Judgment in
5 accordance with the Agreement (the "Final Judgment"), which will adjudicate the rights of the
6 Settlement Class Members with respect to the claims being settled.

7 **7. Class Notice.** The Court approves the form and content of the notices
8 substantially in the forms attached as Exhibits B and C to the Agreement. Defendant shall
9 comply with the notice requirements of Paragraph 4.03 of the Agreement. In compliance with
10 that Paragraph, beginning no later than forty-five (45) days after entry of this Order, Defendant
11 shall cause notice to be delivered in the manner set forth in the Agreement to all Settlement Class
12 Members who can be identified by reverse address look-up. Class Notice by publication shall be
13 in substantially in the form attached as Exhibit B to the Agreement. Class Notices sent by U.S.
14 Mail shall be substantially in the form attached as Exhibit C to the Agreement, or in a fold-over
15 envelope style, to be determined by consultation with the Settlement Administrator. A Long-
16 Form Notice substantially in the form attached as Exhibit D to the Agreement will be available to
17 Settlement Class Members who request further information from the Settlement Administrator.

18 **8. Findings Concerning Class Notice.** The Court finds that the Class Notice and
19 the manner of its dissemination described in Paragraph 7 above and Paragraph 4.03 of the
20 Agreement constitutes the best practicable notice under the circumstances and is reasonably
21 calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of
22 this action, the terms of the Agreement, and their right to object to or exclude themselves from
23 the Settlement Class. The Court finds that the notice plan is reasonable, that it constitutes due,
24 adequate and sufficient notice to all persons entitled to receive notice, and that it meets the
25 requirements of due process, ORCP 32, and any other applicable laws.

1 **9. Exclusion from Settlement Class.** Each Settlement Class Member who wishes to
2 exclude himself or herself from the Settlement Class and follows the procedures set forth in this
3 Paragraph shall be excluded. Any potential member of the Settlement Class may mail a written
4 request for exclusion, in the form specified in the Class Notice, to the Settlement Administrator
5 at the address set forth in the Class Notice. All such written requests must be postmarked by
6 forty-five (45) days after Class Notice is sent pursuant to Paragraph 4.03.2 or 4.03.3 of the
7 Agreement. All persons who properly request exclusion from the Settlement Class shall not be
8 Settlement Class Members and shall have no rights with respect to, nor be bound by, the
9 Agreement, should it be finally approved. The names of all such excluded individuals shall be
10 attached as an exhibit to any Final Judgment.

11 **10. Right to Abrogate Agreement.** In the event more than a previously-agreed
12 number of Settlement Class Members to whom Defendant transmits Class Notice timely exclude
13 themselves from the Settlement Class, Defendant shall have the unilateral right to abrogate the
14 Agreement by written notice of abrogation to Class Counsel in accordance with the procedures
15 set forth in the Agreement. If Defendant exercises its right to abrogate the Agreement, then all
16 aspects of the Agreement and the settlement underlying it, including but not limited to the
17 provisional certification of the Settlement Class for settlement purposes only, shall be altogether
18 null and void, and no aspect of the Agreement, the settlement, or this Order shall serve as legal
19 precedent or as any basis for legal or factual argument in this or any other case.

20 **11. Claims Procedures.** The Court approves the claims procedures set forth in the
21 Agreement. The Court approves the form and content of the Claim Form substantially in the
22 form attached as Exhibit E to the Agreement. The Claim Form will be included with the U.S.
23 Mail Class Notice as provided in Paragraph 4.03.2 of the Agreement. A valid Claim Form, as
24 defined in Paragraph 5.03 of the Agreement, must be submitted as required in the Class Notice
25 via time-stamped email or postmarked letter no later than sixty (60) days after Class Notice is
26 sent pursuant to Paragraph 4.03.2 and 4.03.3. Such deadline may be further extended by Court

Order. Each Claim Form shall be deemed to have been submitted when time-stamped for email transmission or postmarked (if properly addressed and mailed by first-class mail, postage prepaid).

12. Costs of Class Notice and Claims Processing. Defendant shall bear all costs of notice to the Settlement Class of the pendency and settlement of the Action and of processing claims.

13. Objections and Appearances.

(a) Written Objections. Any Settlement Class Member who has not timely submitted a written request for exclusion from the Settlement Class, and thus is a Settlement Class Member, may object to the fairness, reasonableness, or adequacy of the Agreement, or the Fee and Expense Application. Any Settlement Class Member who wishes to object to the Settlement must submit his or her objection in writing, with objections mailed to Class Counsel, Attn: Michael Fuller, OlsenDaines, US Bancorp Tower, 111 SW 5th Ave., Suite 3150, Portland, OR 97204, postmarked no later than forty-five (45) days after the date that email Class Notice is sent. Class Counsel will file copies of any written objections received with the Court via electronic filing. Objecting Settlement Class Members must include their name and address, the name and number of the case, and a statement of the reasons why they (i) believe the Court should find that the proposed settlement is not in the best interests of the Settlement Class or (ii) object to the Fee and Expense Application. Any objection not timely made in this manner shall be waived and forever barred.

(b) Appearance at Settlement Hearing. Any objecting Settlement Class Member who wishes to address the Court at the Settlement Hearing must indicate his or her intent to do so in writing to Class Counsel at the same time that the Settlement Class Member submits the objection and must identify any witnesses and documents that he or she intends to use or submit at the Settlement Hearing. Class Counsel will inform the Court and Defendant's counsel accordingly. Any Settlement Class Member who does not timely deliver a written

objection and notice of intention to appear within forty-five (45) days after the date that Class Notice is sent, in accordance with the requirements of this Order, shall not be permitted to object or appear at the Settlement Hearing, except for good cause shown, and shall be bound by all proceedings, orders and judgments of the Court.

(c) **Fees and Cost Application.** Class Counsel shall file their Fee and Cost Application, together with all supporting documentation, by no later than fourteen (14) days after Class Notice is sent, sufficiently in advance of the expiration of the objection period so that any Settlement Class Member will have sufficient information to decide whether to object and, if applicable, to make an informed objection.

(d) **Motion for Final Approval and Responses to Objections.** Representative Plaintiffs shall file with the Court their motion for final approval of the Settlement and any responses to objections to the Agreement or the Fee and Cost Application, together with all supporting documentation.

14. Dates of Performance: In summary, the dates of performance are as follows:

(a) Defendant shall send the Class Notice to potential Settlement Class Members within forty-five (45) days after entry of this Order;

(b) Representative Class Counsel's Fee and Expense Application, and all supporting materials, shall be filed within fourteen (14) days after Class Notice is sent;

(c) Settlement Class Members who desire to be excluded shall mail requests for exclusion postmarked within forty-five (45) days after Class Notice is sent;

(d) All objections to the Agreement or the Fee and Cost Application shall be filed and served within forty-five (45) after Class Notice is sent;

(e) Settlement Class Members who desire to submit Claim Forms shall do so by email or mail within sixty (60) days after commencement of Class Notice.

(f) Representative Plaintiffs' final approval motion, responses to objections, and all supporting materials, shall be filed by February 1, 2019; and

1 (g) The Settlement Hearing shall be held on February 15, 2019 at 1:30 p.m.

2 **15. *Effect of Failure to Approve the Agreement.*** In the event the Court does not
3 finally approve the Agreement, or for any reason the Parties fail to obtain a Final Judgment as
4 contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any
5 reason, then the following shall apply:

6 (a) All orders and findings entered in connection with the Agreement shall
7 become null and void and have no further force and effect, shall not be used or referred to for
8 any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

9 (b) The conditional certification of the Settlement Class pursuant to this Order
10 shall be vacated automatically, and the case shall return to its status as it existed before entry of
11 this Order;

12 (c) Nothing contained in this Order is, or may be construed as, any admission
13 or concession by or against Defendant or Representative Plaintiffs on any point of fact or law,
14 including, but not limited to, factual or legal matters relating to any effort to certify this case as a
15 class action for purposes of considering settlement approval; and

16 (d) Nothing in this Order or pertaining to the Agreement shall be used as
17 evidence in any further proceeding in this case, including, but not limited to, motions or
18 proceedings pertaining to treatment of this case as a class action.

19 **16. *Discretion of Counsel.*** Counsel are hereby authorized to take all reasonable steps
20 in connection with approval and administration of the Settlement not materially inconsistent with
21 this Order or the Agreement, including, without further approval of the Court, making minor
22 changes to the content of the Class Notice that they jointly deem reasonable or necessary.

23 **17. *Stay of Proceedings Pending Approval of the Settlement.*** All proceedings before
24 the Court are stayed pending final approval of the settlement, except as may be necessary to
25 implement the settlement or comply with the terms of the Agreement.

Pending final determination of whether the settlement should be approved, Representative Plaintiffs, all Settlement Class Members, and any person or entity allegedly acting on behalf of Settlement Class Members, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims, provided, however, that this injunction shall not apply to individual claims of any Settlement Class Members who timely exclude themselves in a manner that complies with this Order. This injunction is necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction.

19. ***Reservation of Rights and Retention of Jurisdiction.*** The Court reserves the right to adjourn or ***continue*** the date of the Settlement Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve or modify the settlement without further notice to Settlement Class Members.

IT IS SO ORDERED.

 10/5/18

1 **Presented by:**

2 OLSEN DANES, PC

3 *Attorneys for Representative Plaintiffs and Proposed Settlement Class*

4 By: _____

5 Michael Fuller, OSB No. 093570

6 michael@underdoglawyer.com

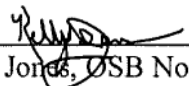
7 111 SW 5th Ave., Suite 3150

8 Portland, OR 97204

9 Telephone: (503) 743-7000

10 **LAW OFFICES OF KELLY JONES**

11 *Attorneys for Representative Plaintiffs and Proposed Settlement Class*

12 By: _____

13 Kelly Jones, OSB No. 074217

14 kellydonovanjones@gmail.com

15 819 SE Morrison Street #255

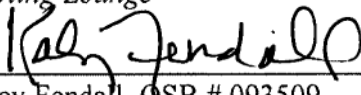
16 Portland, OR 97214

17 Telephone: (503)847-4329

18 **Agreed to form:**

19 DAVIS WRIGHT TREMAINE, LLP.

20 *Attorneys for Defendant Concept Entertainment-Six, LLC d/b/a Grand Central Restaurant and*
21 *Bowling Lounge*

22 By: _____

23 Kaley Fendall, OSB # 093509

24 kaleyfendall@dwt.com

25 1300 S.W. Fifth Avenue, Suite 2400

26 Portland, OR 97201-5610

Telephone: (503) 241-2300

Verified Correct Copy of Original 10/11/2018.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on:

Michael Fuller
Olsen Daines PC
111 SW 5th Ave., Ste. 3150
Portland, OR 97204
Telephone (503) 201-4570
michael@underdoglawyer.com

Of Attorneys for Plaintiffs

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope,
addressed to said attorney's last-known address and deposited in the U.S. mail at Portland,
Oregon on the date set forth below.

Dated this 26th day of September , 2018.

DAVIS WRIGHT TREMAINE LLP

By: s/ Kaley L. Fendall
Kaley L. Fendall, OSB #093509

Of Attorneys for Defendant

CERTIFICATE OF READINESS – UTCR 5.100

(check all that apply)

This proposed order or judgment is ready for judicial signature because:

1. ☐ Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.
2. ☒ Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.
3. ☐ I have served a copy of this order or judgment on each party entitled to service and:
 - a. ☐ No objection has been served on me.
 - b. ☐ I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - c. ☐ After conferring about objections, [role and name of objecting party] agreed to independently file any remaining objection.
4. ☐ Service is not required pursuant to subsection (3) of this rule, or by statute, rule or otherwise.
5. ☐ This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (5) of this rule.
- ☐ Other:

Dated this 26th day of September, 2018.

DAVIS WRIGHT TREMAINE LLP

By: s/ Kaley L. Fendall
Kaley L. Fendall, OSB #093509

Of Attorneys for Defendant