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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CLAIRE SAUNDERS, on behalf of all other
aggrieved employees and the State of California,

Plaintiff,

v.

EMC RESTAURANT GROUP, LLC, a
California limited liability company; and DOES 1
through 10, inclusive,

Defendant.

Case No.: BC700158

[Assigned for All Purposes to the Hon. Yolanda
Orozco, Dept. 31]

**NOTICE OF RULING REGARDING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Action Filed: March 29, 2018

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 On January 10, 2020 PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION
3 SETTLEMENT came on for hearing. The Court issued a tentative Order granting the Motion. The
4 Parties submitted on the tentative Order, and the tentative Order, attached hereto as Exhibit 1, became the
5 Order of the Court.

6 Respectfully submitted,

7 Dated: January 20, 2020

MOON & YANG, APC

8
9 By:  _____

Kane Moon
H. Scott Leviant
Lilit Ter-Astvatsatryan

11 Attorneys for Plaintiffs
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Exhibit 1

DEPARTMENT 31 LAW AND MOTION RULINGS

Counsel may submit on the tentative ruling by emailing Dept. 31 before 8:30 the morning of the hearing. The email address is smcdept31@lacourt.org. Please do not call the court to submit on the tentative. Please do not submit to the tentative ruling on behalf of the opposing party. Please do not e-mail the Court if you plan to appear and argue.

In deciding whether to submit on the tentative ruling or attend the hearing and present oral argument, please keep the following in mind:

The tentative rulings authored by this court reflect that the court has read and considered all pleadings and evidence timely submitted to the court in connection with the motion, opposition, and reply (if any). Because the pleadings were filed, they are part of the public record.

Oral argument is not an opportunity to simply regurgitate that which a party set forth in its pleadings. Nor, is oral argument an opportunity to "make a record" when there is no court reporter present and the statements and arguments of counsel are already part of the record because they were set forth in the pleadings. Finally, simply because a party or attorney disagrees with the court's analysis and ruling or is not satisfied with it does not necessarily warrant oral argument when no new arguments will be articulated.

If you submit on the tentative, you must immediately notify all other parties email that you will not appear at the hearing. If you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear at the hearing and argue the motions. If all parties to the motion submit, this tentative ruling will become the final ruling after the hearing date and it will be memorialized in a minute order. This tentative ruling is not an invitation, nor an opportunity, to file further documents relative to the hearing in question. No such document will be considered by the Court.

****Tentative rulings on Motions for Summary Judgment will only be available for review in the courtroom on the day of the hearing.**

Case Number: BC700158 **Hearing Date:** January 10, 2020 **Dept:** 31

Background

On March 29, 2018, Plaintiff Claire Saunders, on behalf of all other aggrieved employees and the State of California filed the instant action against EMC Restaurant Group, LLC and Does 1 through 10. The Complaint asserts a single cause of action for Civil Penalties under PAGA (Cal. Labor Code § 2699, et seq.). On August 16, 2019, Plaintiff filed the First Amended Complaint "FAC". The FAC added Michaela Slezak, Debbie Yi, and Sabrina Schalk as Plaintiffs and EMC Concord, LLC; EMC Irvine, LLC; and EMC Santa Row, LLC as Does 1-3. It asserts causes of action for:

1. Civil Penalties under PAGA [Cal. Lab. Code § 2699, et seq.];
2. Fair Labor Standards Act [29 U.S.C. § 201, et seq.];
3. Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 1194, 1194.2, and 1197];
4. Failure to Pay Overtime Compensation [Cal Lab. Code § 1194 and 1198];
5. Failure to Provide Meal Periods [Cal. Lab. Code § 226.7, 512];
6. Failure to Authorize and Permit Rest Periods [Cal. Lab. Code § 226.7];

7. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
8. Failure to Provide Accurate, Itemized Wage Statements [Cal. Lab. Code § 226]; and
9. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.].

On September 26, 2019, the Court preliminarily approved the Class Action Settlement in this case. The Settlement settles Los Angeles County Superior Court case number BC700158 and related case United States District Court, Central District of California case number 2:17cv09059-AB-AFM.

Legal Standard

California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the Court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. (See Cal. Rules of Court, Rule 3.769(h).) The class action may not be dismissed once judgment is entered. (See Cal. Rules of Court, Rule 3.770.) All class settlements are subject to a settlement hearing and Court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. (*Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434, 438.) The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

Discussion

Notice, Opt-Outs, and Recovery under Settlement

The parties engaged CPT Group, Inc. as Settlement Administrator. (Leviant Decl. ¶ 33.) On October 10, 2019, CPT Group sent individual Notices to 1,080 Settlement Class Members via First Class mail. (Cofinco Decl. ¶ 5-7.) Of the Notices that were mailed, 132 were returned and 84 Notices were re-mailed after skip tracking. (Cofinco Decl. ¶ 9-10.) Ultimately, 55 notice packets were undeliverable. (Cofinco Decl. ¶ 10.)

The Class Notice advised Class Members that they could submit a dispute, request for exclusion, or objection to the settlement by November 25, 2019. (Cofinco Decl. ¶ 7.) 67 Class Members chose to opt into the FLSA settlement. (Cofinco Decl. ¶ 14.) Zero (0) Settlement Class Members objected to the Agreement. (Cofinco Decl. ¶ 11.) Only one (1) Settlement Class Member requested exclusion. (Cofinco Decl. ¶ 13.) 1,079 members of the 1,080-member class are participating in the settlement, which represents a 99.91% participation rate. (Cofinco Decl. ¶ 15.)

The average individual settlement payment is approximately \$122.80. (Cofinco Decl. ¶ 15.) The highest individual settlement payment is \$1,451.39. (Cofinco Decl. ¶ 15.)

Evaluation of Settlement

Before granting final approval, the court must evaluate the fairness of the proposed settlement and independently assess the reasonableness of the settlement's terms. (Cal. Rules of Court, Rule 3.769(g); *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The proponent of the settlement bears the burden of establishing the settlement's fairness and reasonableness. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245; see also *7-Eleven Owners for Fair Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165-66.)

A presumption of fairness exists where (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Wershba*,

supra, 91 Cal.App.4th at 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Even if a presumption of fairness exists, the court still must “independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interest of those whose claims will be extinguished.” (*Kullar, supra*, 168 Cal.App.4th at 130.) The following factors guide the court’s determination:

[T]he trial court should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.

(*Wershba, supra*, 91 Cal.App.4th at 244-245.)

Of the relevant factors, the most important is the strength of the plaintiff’s case on the merits balanced against the amount offered in settlement. (*Kullar, supra*, 168 Cal.App.4th at 130.) In considering the amount offered, the court is mindful that compromise is inherent and necessary in the settlement process. (*Wershba, supra*, 91 Cal.App.4th at 250.)

The Court finds that the settlement is fair, adequate, and reasonable based on the following:

1. The Settlement resulted from thorough, arms’ length negotiations between experienced counsel with the assistance of a highly-regard mediator, Joel Grossman. (Leviant Decl. ¶ 7-10.) The participation of a neutral mediator in settlement negotiations implies that the proceedings were free of collusion or undue pressure, *i.e.*, such mediation is presumptively arms-length negotiation. (*Cf. D’Amato v. Deutsche Bank* (2nd. Cir. 2001) 236 F.3d 78, 85.)
2. The settlement followed extensive informal discovery, with Defendants providing all applicable versions of Defendants’ personnel and payroll policies, records relating to employees’ hours worked and wages paid, and data pertaining to Plaintiffs and the Settlement Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of each purported subclass within the Settlement Class, average workweeks, and average rate of hourly pay. (Prelim. App. Leviant Decl. ¶ 5, 13, 15.)
3. Class counsel has extensive experience in wage-related class actions. (Prelim. App. Leviant Decl. ¶ 21-26.)
4. There has been no objection to the settlement and only 1 of the 1,080-member class requested to be excluded. (Cofinco Decl. ¶ 13.)

Based on this evidence, the Court finds a presumption of fairness for the settlement.

Further, as noted in this Court’s order preliminarily approving the class action settlement, the Settlement was reached after evaluating the Parties’ theories of potential exposure for the underlying claims and Plaintiffs’ claims for interest and penalties, and after Defendants’ financial condition was taken into account, as Defendants were in the process of closing several locations due to financial non-viability. (Prelim. App. Leviant Decl. ¶ 8.) Moreover, further litigation carried substantial risks, including those related to the outcome of certification, possible summary judgment efforts, and the risk that arbitration agreements would preclude any class-wide resolution. (Prelim. App. Leviant Decl. ¶ 13, 16.)

Based on the risks of establishing the case on the merits, the risk of non-certification, the risk that arbitration agreements would preclude any class-wide resolution, and Defendants’ financial condition, the amount offered in settlement is reasonable. The Parties agree to settle for a total of \$285,000.00, with no reversion to Defendant. From this, Defendant has agreed to pay \$24,000 as PAGA penalties, with 75% (\$18,000.00) allocated to the LWDA and the remaining 25% (\$6,000.00) distributed to the class. The settlement further provides a service award of \$6,000.00 to Plaintiff Saunders and \$3,000.00 for each of

Plaintiffs Slezak, Yi, and Schalk. Settlement Administrator costs of \$15,500.00 and attorney fees and costs are also accounted for in the gross settlement amount, while Defendants' portion of payroll taxes owed on any settlement payments to Settlement Class Members that constitute wages are not included, as they will be separately paid.

Based on the foregoing, the Court finds that the settlement is fair, adequate and reasonable in light of the risks involved in the litigation, the recommendation of the class counsel, and the class members' positive reaction to the settlement.

Attorneys' Fees

California law finds that when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503.) This allows for a relative ease of calculation, an alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement to seek an early settlement and avoid unnecessarily prolongment of the litigation. (*Id.*)

Plaintiffs seek attorneys' fees of \$95,000.00 and actual litigation costs of \$7,900.27. The Court granted preliminary approval of these amounts on September 26, 2019, when it granted Plaintiffs' application for preliminary approval of settlement.

The requested attorneys' fees award is 1/3 of the \$285,000.00 settlement amount. The amount requested in costs, \$7,900.27 is less than the \$12,000.00 maximum cost allocation stipulated to by the parties in Settlement. Here, no Class Member objected to the settlement, to the attorney fee award based on 1/3 of the settlement award, or the costs allocation. Further, the remaining funds allocated to the payment of costs will be distributed amongst the Class Members.

Based on the foregoing, the Court finds that the requested amount of attorneys' fees and costs is reasonable and grants the fee request.

Conclusion

The Motion for Final Approval of Class Action Settlement is GRANTED.

Moving party to give notice.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **NOTICE OF RULING**
6 **REGARDING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested
parties as follows [or] ☐ as stated on the attached service list:

7 Lauren J. Katunich, Esq.
8 LKatunich@Raineslaw.com
9 Allison S. Wallin, Esq.
AWallin@Raineslaw.com
10 **RAINES FELDMAN LLP**
1800 Avenue of the Stars, 12th Floor
Los Angeles, California 90067

11 *Attorneys for Defendant, EMC Restaurant*
12 *Group, LLC*

13 ☒ **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was
14 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of
collection and processing correspondence for mailing. Under that practice it would be deposited with
15 U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in
the ordinary course of business. I am aware that on motion of the party served, service is presumed
invalid if postal cancellation date or postage meter date is more than one day after date of deposit for
mailing in affidavit.

16 ☐ **BY PERSONAL DELIVERY:** I delivered said document(s) to the office of the addressee shown
17 above under whom it says delivered by personal delivery.

18 ☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and
19 processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
20 picked up by the carrier at our offices or delivered by our office to a designated collection site.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct. Executed this **January 20, 2020** at Los Angeles, California.

22 Angel Reyes
23 Type or Print Name

24 
25 Signature