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THE HONORABLE MARSHALL FERGUSON
HEARING DATE: JUNE 29, 2021

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

MELISSA LEHUTA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

HEAVY RESTAURANT GROUP, LLC, a
Delaware limited liability company, and
DOES 1-10, inclusive,

Defendant.

CASE NO. 20-2-16551-4 SEA

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**

1 The motion filed by Plaintiff Melissa Lehuta (“Plaintiff”), on behalf of herself and all
2 others similarly situated, for preliminary approval of her class action settlement with Defendant
3 Heavy Restaurant Group, LLC (“Defendant” or “HRG”), seeking conditional certification of a
4 settlement class in this action, preliminary approval of the Parties’ proposed Settlement, approval
5 of the notice to be sent to Proposed Class Members about the Settlement, and the setting of a date
6 for the hearing on final approval of the Settlement came before the Court for consideration. The
7 Court, having read and considered the papers on the motion, the arguments of counsel, and the
8 law, and good cause appearing therefore,

9 **IT IS ORDERED:**

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

12 All individuals who were employed by Defendant and who worked one or more
13 shifts at its Meet the Moon and/or Pablo y Pablo restaurants in a Covered Position¹
14 at any time from November 12, 2017 through and including March 18, 2020 (the
15 “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
19 170 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 \$155,000 falls within the range of possible final approval as fair, adequate and reasonable,

26 _____
27 ¹ “Covered Position” means hourly work performed as an employee of HRG as a server, bartender, busser, host,
28 expeditor, and/or cocktailer (or any other similar “front of the house” service position).

1 was the product of arm's-length and informed negotiations between the Parties, and appears to
2 treat all Proposed Class Members fairly.

3 4. The Parties' proposed Notice of Settlement plan is constitutionally sound because
4 individual notices will be mailed to all Proposed Class Members whose identities are known to the
5 Parties. The Notice of Settlement will be disseminated according to the notice procedure described
6 in the Settlement and substantially in the form submitted by the Parties. To ensure that the Notice
7 of Settlement reaches as many Proposed Class Members as possible, the Settlement Administrator
8 will take the class data provided by the Parties (which will include each Proposed Class Member's
9 name, last-known mailing address, telephone number, email address, Social Security number, and
10 Weeks Worked during the Settlement Class Period and Service Charge Period) and update the
11 addresses using the National Change of Address database. After doing so, the Settlement
12 Administrator will mail the Notices of Settlement. If any of the Notices of Settlement are returned
13 by the U.S. Postal Service as undeliverable (i.e., there is no forwarding address), the Settlement
14 Administrator will perform "skip trace" address searches and will re-mail notices to Proposed
15 Class Members for whom new addresses are provided or are found. Proof of distribution of the
16 notice will be filed by the Parties at or prior to the final approval hearing. The Parties' proposed
17 Notice of Settlement and Share Form (Settlement, **Exhibit A**) are sufficient to inform Proposed
18 Class Members of the terms of the Settlement, their rights under the Settlement (including, but not
19 limited to, their right to participate in the Settlement by doing nothing, their right to object to the
20 Settlement, or their right to request to be excluded from the Settlement), and the date and location
21 of the final approval hearing. The Notice of Settlement further advises Proposed Class Members
22 that, if they do not elect to exclude themselves from the Settlement, they will receive their pro-rata
23 share of the Class Fund and will be bound by the release of claims in the Settlement Agreement²

24 _____
25 ² The Released Claims are defined as "any and all claims, whether known or unknown, that were brought or that could
26 have been brought based on any facts alleged in the Case with respect to: (i) an alleged failure on the part of HRG to
27 properly disclose, distribute, and/or pay automatic service charges to employees pursuant to Chapter 49.46 RCW
28 and/or any analogous or related federal, state, or municipal law (including, but not limited to, claims arising under the
Seattle Municipal Code); and (ii) claims for missed, untimely, non-compliant, or unpaid rest periods pursuant to

1 with respect to Defendant and the other released parties.³ The Notice plan provides the best notice
2 practicable and, therefore, is approved.

3 5. Any Proposed Class Member who wishes to object to the Settlement, including the
4 Class Counsel requested attorneys' fees and/or litigation costs, has until 45 days after the mailing
5 of the Notice of Settlement to submit a written objection, pursuant to the procedures set forth in
6 the Notice of Settlement.

7 6. Any Class Member may opt-out of the Settlement by submitting a written request
8 for exclusion from the Settlement no later than 45 days after the mailing of the Notice of
9 Settlement, pursuant to the procedures set forth in the Notice of Settlement.

10 7. Any Proposed Class Member who does not timely submit a written objection that
11 complies with the requirements in the Notice of Settlement shall not be permitted to object or
12 appear at the final approval hearing, shall be deemed to have waived and forfeited any objection
13 at the final approval hearing, and shall be bound by all proceedings, orders and judgments of the
14 Court. Any Class Member who wishes to be heard orally at the final approval hearing, either
15 personally or through an attorney, must so state explicitly in the Proposed Class Member's written
16 objection as described in the Notice, or the Proposed Class Member will not be heard orally. Any
17 objection that is not timely made shall be forever barred. Any attorney hired by a Proposed Class
18 Member at that Proposed Class Member's expense for the purpose of making objections must file
19 with the Clerk of the Court, and serve the Parties' counsel, a notice of appearance, within 45 days
20

21 Chapter 49.12 RCW, WAC § 296-126-092, and/or any analogous or related federal, state, or municipal law (including,
22 but not limited to, claims arising under the Seattle Municipal Code). The Released Claims specifically include, but
23 are not limited to: (A) any claims arising out of or relating to any alleged failure on the part of HRG to properly
24 disclose the manner in which it distributes any automatic service charges on its menus and/or receipts; (B) any claims
25 arising out of or relating to the manner in which HRG distributed or paid (or did not distribute or pay) any service
26 charges it collected to its employees; (C) any claims arising out of or relating to any alleged missed, interrupted,
27 shortened, untimely, unpaid, and/or non-compliant rest breaks; and (D) any claims relating to the foregoing matters
28 set forth in subsections (A)-(C) [] for unpaid wages, overtime payments, premium payments, interest, exemplary
damages, penalties, and attorneys' fees and costs." See S.A., ¶ VI.1.v and VI.2.b.

³ The released parties include the following: "Defendant Heavy Restaurant Group, LLC, as well as each of its past or
current predecessors, 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.w.

1 of the date of the Notice of Settlement.

2 8. The Court makes the following appointments: (1) Plaintiff Melissa Lehuta as Class
3 Representative; (2) Craig J. Ackermann, Brian W. Denlinger, and India Lin Bodien as Class
4 Counsel; and (3) CPT Group, Inc. as Settlement Administrator.

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

8 10. The Settlement Administrator is directed to mail and email the approved Notice of
9 Settlement to the Proposed Class Members no later than 40 days after the date of this Order, as
10 specified by paragraphs VI.7.a and VI.8.c.1 in the Settlement Agreement.

11 11. A final hearing will be held on Friday, December 3, 2021, at 1:00 p.m., to determine
12 whether the Settlement should be granted final approval as fair, reasonable, and adequate. The
13 Court will hear all evidence and argument necessary to evaluate the Settlement and will consider
14 the Class Representative's request for a Class Representative Service Award and Class Counsel's
15 request for an Attorneys' Fees and Costs Award. Proposed Class Members and their counsel may
16 oppose the Settlement and/or the motion for awards of the Class Representative Service Award
17 and the Attorneys' Fees and Costs Award, if they so desire, as set forth in the Notice of Settlement.

18 12. Plaintiff's motion in support of final approval, including any request for an
19 Attorneys' Fees and Costs Award, must be filed no later than 5 Court days before the final approval
20 hearing. Any Proposed Class Member may appear at the final approval hearing in person or by his
21 or her own attorney, and show cause why the Court should not approve the Settlement, or object
22 to the motion for awards of the Class Representative Service Payment and/or the Attorneys' Fees
23 and Costs Award.

24 13. Pending final determination of whether the Settlement should be approved,
25 Plaintiff, all Proposed Class Members and any person or entity allegedly acting on behalf of
26 Proposed Class Members, either directly, representatively or in any other capacity, are
27 preliminarily enjoined from commencing or prosecuting against the released parties any action or

1 proceeding in any court or other forum asserting any of the Released Claims. This injunction is
2 necessary to protect and effectuate the Settlement, this Order, and the Court's flexibility and
3 authority to enter judgment when appropriate and is ordered in aid of the Court's jurisdiction and
4 to protect its judgments.

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

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

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

18 **IT IS SO ORDERED.**

19 *Electronic signature attached*

20 Date: June 29, 2021

21 _____
HONORABLE JUDGE MICHAEL R. SCOTT
SUPERIOR COURT JUDGE OF KING COUNTY

22 Presented by:

23 ACKERMANN & TILAJEF, P.C.
24 INDIA LIN BODIEN, ATTORNEY AT LAW

25 /s/ Craig Ackermann
Craig Ackermann, WSBA #53330
26 Brian W. Denlinger, WSBA #53177
India Lin Bodien, WSBA #44898
27 *Co-Counsel for Plaintiff and the Class*

JACKSON LEWIS P.C.

28 /s/Peter H. Nohle
Peter H. Nohle, WSBA #25849
Kira J. Johal, WSBA #53549
Attorneys for Defendant

ORDER

ACKERMANN & TILAJEF, P.C.
2602 NORTH PROCTOR STREET, SUITE 205
TACOMA, WA 98406
P: (253) 625-7720 F: (253) 276-0081

King County Superior Court
Judicial Electronic Signature Page

Case Number: 20-2-16551-4
Case Title: LEHUTA VS HEAVY RESTAURANT GROUP
Document Title: ORDER RE CONDITIONAL APPROVAL
Signed By: Michael R. Scott
Date: July 08, 2021



Judge: Michael R. Scott

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: B5A3B5FE79E17714D2D0890F5E0D5DD2F97A50F5
Certificate effective date: 4/3/2018 3:49:12 PM
Certificate expiry date: 4/3/2023 3:49:12 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Michael R.Scott:
2nriflr95BGjnGJmHl1GsA=="