

TGI Friday's Gets Initial OK On Revised \$19.1M Wage Deal

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Law360, New York (October 27, 2017, 2:22 PM EDT) -- A New York federal judge on Thursday granted preliminary approval to a revised \$19.1 million settlement of a wage suit brought against restaurant chain TGI Friday's Inc. by a class of 28,000 tipped workers after the parties agreed to remove provisions that previously led the judge to kill the settlement.

U.S. District Judge Analisa Torres had rejected the settlement between TGI Friday's and the workers led by Julio Zorrilla because she found the proposed class action's confidentiality provision was impermissibly vague and its waivers and releases were too sweeping. But on Thursday the judge ruled the proposed settlement of the suit, which alleges violations of the Fair Labor Standards Act and the labor or unfair competition laws of nine states, is now sufficiently "fair and reasonable" to merit preliminary approval.

"The parties have eliminated the problematic confidentiality and waiver provisions included in the original agreement," Judge Torres said. "Accordingly, the revised agreement no longer suffers from the deficiencies that previously precluded approval of the agreement."

TGI Friday's must now transmit the payment required by the revised agreement to the settlement account by Nov. 9, and the claims administrator must create and institute a dedicated website by the same date, Judge Torres ruled.

Judge Torres [rejected the proposed settlement on Sept. 22](#), saying that no justifications were offered for certain confidentiality provisions in the [proposal filed Sept. 15](#), such as the requirement that even after a motion for preliminary approval had been filed counsel for any party could only respond to media inquiries by confirming the accurate terms of the deal.

The parties offered up [a new deal on Sept. 28](#) that cut the troublesome confidentiality and claims release provisions from the earlier settlement. Specifically, the new deal entirely removed a confidentiality provision that had barred attorneys and named plaintiffs from "at any time" discussing settlement negotiations or the deal itself with the news media or on social media under penalty of losing their share of the settlement. Judge Torres said this was "vaguely worded" and could interfere with workers' awareness of their rights.

The new agreement also removed release provisions that Judge Torres said "extend far beyond what is 'fair and reasonable,'" citing the Southern District of New York's standard for settlement fairness. The Sept. 28 proposal scaled back releases blocking workers from suing over "any claims of any type" to bar only federal and state wage claims directly related to the allegations in the present suit.

The workers' attorneys — [Outten & Golden LLP](#) and Fitapelli & Schaffer LLP — said in a Sept.

28 memorandum in support of the settlement motion that they would ask the court to award them a third of the settlement in fees, or \$6.36 million, plus reimbursement of out-of-pocket costs. Meanwhile, the workers would get a pro rata share of the settlement based on the number of weeks they worked during the proposed class period, according to their approval memorandum. They added that the deal is fair, in light of the risks of continuing litigation.

Judge Torres on Thursday said that the workers' counsel had indeed indicated that it intends to move separately for court approval of attorneys' fees equaling one-third of the settlement amount, but as no evidence has yet been submitted to support the one-third fee amount, she did not reach the issue of fees in her preliminary approval.

The fully approved deal would resolve a nationwide putative class action brought by more than a dozen lead plaintiffs, alleging violations of the FLSA and claims brought under the labor or unfair competition laws of nine states: California, Colorado, Connecticut, Florida, Illinois, Maryland, Michigan, New Jersey and New York. The suit names as defendants the restaurant chain [TGI Friday's Inc.](#) along with TGI Friday's former owner, the hospitality firm Carlson Restaurants Inc.

Among the numerous allegations, the workers claim that the restaurant owners improperly took a "tip credit" from their paychecks and paid them a reduced minimum wage, which the FLSA and state laws sometimes permit, but not under the circumstances in this case. They also allege that the restaurant owners failed to pay them all owed overtime and uniform-related expenses, misappropriated tips and took unlawful deductions for customer walkouts.

The Sept. 28 memo notes the value of unpaid wages being settled are estimated to range between \$16.5 million and \$91 million. The proposed deal therefore represents between 20 percent and 115 percent of the estimated unpaid wages, the memo says.

An attorney for the workers declined comment Friday.

Attorneys for TGI Friday's did not immediately respond to a request for comment.

The workers are represented by Justin M. Swartz, Molly A. Brooks, Juno Turner and Sally J. Abrahamson of Outten & Golden LLP, and Joseph A. Fitapelli, Brian S. Schaffer and Frank J. Mazzaferro of Fitapelli & Schaffer LLP.

The companies are represented by Gerald L. Maatman Jr., Jennifer A. Riley, Scott R. Rabe and Brendan Sweeney of [Seyfarth Shaw LLP](#).

The case is Julio Zorrilla et al. v. Carlson Restaurants Inc., Carlson Restaurants Worldwide Inc. and TGI Friday's Inc., case number [1:14-cv-02740](#), in the U.S. District Court for the Southern District of New York.