

Zorrilla v. Carlson Rests., Inc.

United States District Court for the Southern District of New York

April 9, 2018, Decided; April 9, 2018, Filed

14 Civ. 2740 (AT)

Reporter

2018 U.S. Dist. LEXIS 60772 *

JULIO ZORRILLA, TASHAUNA REID, MATTHEW MACKEY, JOSE FERNANDEZ, BENJAMIN KRAMER, AMANDA STEWART, AMBER SWAN, KRISTINE ZEFFIELD, SYDNI SMITH, NICHOLE MARINO, AMBER BUTLER, JOHN VERDIN, JANE BATEMAN, and JOSEPH LOMBARD on behalf of themselves and all others similarly situated, Plaintiffs, -against- CARLSON RESTAURANTS INC., CARLSON RESTAURANTS WORLDWIDE INC., and T.G.I. FRIDAY'S INC., Defendants.

For T.G.I. Friday's Inc., Defendant: Gerald Leonard Maatman, Jr, LEAD ATTORNEY, Jennifer A Riley, Seyfarth Shaw Llp, Chicago, IL USA; Adam Jeremy Smiley, Brendan M. Sweeney, Gina Renee Merrill, Scott Roblan Rabe, Seyfarth Shaw LLP, New York, NY USA.

Judges: ANALISA TORRES, United States District Judge.

Opinion by: ANALISA TORRES

Core Terms

Settlement, Tipped, corporate-owned, performing work, final approval, attorneys'

Counsel: [*1] For Josephine Diaz, on behalf of herself and all others similarly situated, Plaintiff: Brian Scott Schaffer, Frank Joseph Mazzaferro, Fitapelli & Schaffer LLP New York, NY USA; Joseph A. Fitapelli, Fitapelli & Schaffer, New York, NY USA; Justin Mitchell Swartz, Outten & Golden, LLP (NYC), New York, NY USA; Sally Jasmine Abrahamson, PRO HAC VICE, Outten & Golden, LLP (NYC), New York, NY USA.

Juno Emmeline Turner, Michael Joseph Scimone, Outten & Golden, LLP (NYC), New York, NY USA.

For Amber Butler, Plaintiff: Molly Anne Brooks, LEAD ATTORNEY, Justin Mitchell Swartz, Outten & Golden, LLP (NYC), New York, NY USA.

For Cheryl Griffin, Mother, as the representative of Plaintiff Michael D. Honeycutt, Plaintiff: Justin Mitchell Swartz, LEAD ATTORNEY, Outten & Golden, LLP (NYC), New York, NY USA.

For Carlson Restaurants Inc., Carlson Restaurants Worldwide Inc., Defendants: Adam Jeremy Smiley, Brendan [*4] M. Sweeney, Gina Renee Merrill, Scott Roblan Rabe, Seyfarth Shaw LLP, New York, NY USA; Gerald Leonard Maatman, Jr, Seyfarth Shaw Llp, Chicago, IL USA; Jennifer A Riley, PRO HAC VICE, Seyfarth Shaw Llp, Chicago, IL USA.

Opinion

FINAL ORDER AND JUDGMENT GRANTING PLAINTIFFS' MOTION FOR CERTIFICATION OF THE SETTLEMENT CLASS, FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT, AND APPROVAL OF THE FLSA SETTLEMENT; MOTION FOR APPROVAL OF SERVICE AWARDS; AND MOTION FOR APPROVAL OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

ANALISA TORRES, District Judge:

The above-entitled matter came before the Court on Plaintiffs' Motion for Certification of the Settlement Class, Final Approval of the Class Action Settlement, and Approval of the FLSA Settlement ("Motion for Final Approval"), Motion for Approval of Service Awards ("Motion for Service Awards"), and Motion for Approval of Attorneys' Fees and Reimbursement [*5] of Expenses ("Motion for Fees"). After reviewing the papers in support of the Motions for Final Approval, Service Awards, and Fees, and supporting declarations and exhibits, the arguments of counsel during the April 9, 2018 Fairness Hearing, and all other materials properly before the Court, the Court hereby finds and orders as follows:

A. On March 21, 2018, Plaintiffs filed a Motion for Final Approval with respect to the proposed Settlement Agreement

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and Release ("Settlement Agreement"), their Motion for Service Awards, and Motion for Fees.

B. All capitalized terms in this Order with respect to the Settlement Agreement that are not otherwise defined have the same meaning as in the Settlement Agreement.

C. NOW THEREFORE, after due deliberation and for good cause, this Court hereby ORDERS that:

1. For the reasons stated on the record, the Court finds that the numerosity, commonality, typicality, and adequacy requirements of [Rule 23\(a\) of the Federal Rules of Civil Procedure](#), and the predominance and superiority requirements of [Rule 23\(b\)\(3\) of the Federal Rules of Civil Procedure](#) have been met warranting class and collective certification for purposes of effectuating the settlement. The Court hereby certifies the following State Law Classes (collectively, the "Settlement Class") for settlement [*6] purposes:

a. The "New York Class" means all persons who were employed by any Defendant and performed work as a Tipped Worker¹ in any Friday's corporate-owned location² in New York state between April 17, 2008, and the Preliminary Approval Date.

b. The "New Jersey Class" means all persons who were employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in New Jersey between January 30, 2013, and the Preliminary Approval Date.

c. The "Colorado Class" means all persons who were employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in Colorado between January 19, 2013, and the Preliminary Approval Date.

d. The "California Class" means all persons who were employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in California between January 19, 2012, and the Preliminary Approval Date.

e. The "Illinois Class" means all persons who were

employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in Illinois between January 19, 2013, and the Preliminary Approval Date.

f. The "Connecticut Class" means all persons [*7] who were employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in Connecticut between January 19, 2014, and the Preliminary Approval Date.

g. The "Florida Class" means all persons who were employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in Florida between January 19, 2011, and the Preliminary Approval Date.

h. The "Maryland Class" means all persons who were employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in Maryland between January 19, 2013, and the Preliminary Approval Date.

i. The "Michigan Class" means all persons who were employed by any Defendant and performed work as a Tipped Worker in any Friday's corporate-owned location in Michigan between January 19, 2013, and the Preliminary Approval Date.

2. For the reasons stated on the record, the Court finds that the Settlement Agreement is fair, reasonable, adequate, not the product of collusion, and should be approved on a final basis.

3. The Court finds that there were no written objections to the Settlement.

4. The Parties' dissemination of the Notice of Class Action Settlement [*8] to the Class Members via First Class United States Mail to the last known address of each Class Member and via email, if available, was in accordance with Section VII of the Settlement Agreement. The Court finds that the procedures for notifying the Class Members about the settlement constituted the best notice practicable under the circumstances to all Class Members, and fully satisfied all necessary requirements of due process. Based on the evidence and other materials submitted to the Court, the Notice of Class Action Settlement to the Class Members provided adequate, due, sufficient and valid notice of the settlement.

5. Based on the foregoing, the Court approves Certification of the Settlement Class.

6. Based on the foregoing, the Court grants final approval of the Class Action Settlement.

¹"Tipped Worker" means any individual who worked for any Defendant as a host, busser, server, cocktail server, food runner, bartender, or service bartender, or any other position in which he or she received tips.

²"Friday's corporate-owned location" means any T.G.I. Friday's location owned and operated by T.G.I. Friday's Inc.

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7. Based on the foregoing, the Court grants approval of the FLSA Settlement. The settlement is the product of contested litigation to resolve *bona fide* disputes. 8. The Court approves the requested Service Payments of \$15,000 each for Named Plaintiffs Julio Zorrilla, Matthew Mackey, and Tashauna Reid, who participated in multiple rounds of discovery and/or depositions; \$10,000 each for Named Plaintiffs [*9] Jose Fernandez, Benjamin Kramer, Amanda Stewart, Amber Swan, Kristine Zeffield, Sydni Smith, Nichole Marino, John Verdin, Jane Bateman, and Joseph Lombard, who participated in one round of discovery and were deposed; and \$2,500 each for Opt-in Plaintiffs Patrick Pink, Gene Ellis, Alyssa Sweet, Scott Miozzi, Emily Horn, Breanna Lackey, Samantha McMillan, Megan Shay, Kyle Septoski, and Megan Marty, who were deposed.

9. For the reasons stated on the record, Class Counsel's request for attorneys' fees and litigation costs and expenses in this action is approved. Accordingly, Class Counsel are hereby awarded \$6,366,666.67, or one-third of the Gross Settlement Amount, for attorneys' fees and \$278,806 for reimbursement of litigation costs and expenses.

10. The Claims Administrator will distribute the Settlement Payments, including Service Payments, and Class Counsel's Fees and Costs in accordance with the terms of the Settlement Agreement. The Claims Administrator is ordered to provide verification to Class Counsel and Defendants' Counsel that it has distributed the Settlement Payments and made proper withholdings, and to retain copies of all endorsed settlement checks.

11. The Class Action [*10] Litigation is dismissed with prejudice.

12. Opt-in Plaintiffs and Claimants, and their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have released and forever discharged the Released State Law Claims and Released FLSA Claims.

13. Class Members who have not submitted a valid Request for Exclusion shall be barred from accepting, joining, or instituting any suit, class or collective action, administrative claim or other claim of any sort or nature whatsoever against the Released Parties, for the time periods specified in the Settlement Agreement, concerning, related to, or arising from any of the Released State Law Claims.

14. The Court will retain jurisdiction over the interpretation and implementation of the Settlement Agreement, as well as any and all matters arising out of, or related to, the interpretation or implementation of the Settlement Agreement.

15. The Court finds, pursuant to [Fed. R. Civ. P. 54\(b\)](#), that there is no just reason for delay, and directs the Clerk to enter this Order.

SO ORDERED.

Dated: April 9, 2018

New York, New York

/s/ Analisa Torres

ANALISA TORRES

United States District Judge

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