

06/24/2024

David W. Slayton, Executive Officer / Clerk of Court

By: T. Lewis Deputy

BRADLEY/GROMBACHER, LLP

Marcus Bradley, Esq. (SBN 174156)

Kiley Grombacher, Esq. (SBN 245960)

Lirit King, Esq. (SBN 252521)

31365 Oak Crest Drive, Suite 240

Westlake Village, CA 91361

Telephone: (805) 270-7100

Facsimile: (805) 618-2939

Email: mbradley@bradleygrombacher.com

Email: kgrombacher@bradleygrombacher.com

Email: lking@bradleygrombacher.com

Attorneys for Plaintiff MODESTO ZEPEDA on
behalf of himself and others similarly situated

[Additional counsel listed on following page]

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MODESTO ZEPEDA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

RESTAURANT TECHNOLOGIES, INC., a
Delaware corporation; and DOES 1 to 10,
inclusive

Defendants.

CASE NO. 23STCV10286

**Assigned to Hon. David S. Cunningham, III
Department 11**

**(REVISED) [~~PROPOSED~~] ORDER
GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: May 28, 2024

Time: 11:00 a.m.

Dept: 11

Complaint filed May 8, 2023

1 The Motion for Preliminary Approval of a Class Action and PAGA Settlement came before
2 this Court on RECEIVED, 2024. The Court, having considered the papers in support of the
3 application of the Parties, HEREBY ORDERS THE FOLLOWING:

4 1. The Court grants preliminary approval of the Settlement and the Settlement Class
5 based upon the terms set forth in the Class-PAGA Action Settlement Agreement (“Settlement
6 Agreement”). All terms used herein shall have the same meaning as defined in the Settlement
7 Agreement. The Settlement appears to be fair, adequate and reasonable to the Class.

8 **CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

9 2. The Class defined in the Settlement Agreement is defined as:
10 Plaintiff and all non-exempt employees who worked for Defendant in
11 California from May 8, 2019 through the date the court grants
12 preliminary approval of the settlement, or 90 days from November 8,
13 2023, whichever is sooner.
14 Settlement Agreement § 1.5.

15 3. The Court conditionally finds that, for the purposes of approving this settlement
16 only, the proposed Class meets the requirements for certification under section 382 of the
17 California Code of Civil Procedure.

18 **PRELIMINARY APPROVAL OF SETTLEMENT**

19 4. The Court hereby preliminarily grants approval of the terms and conditions contained
20 in the Settlement Agreement, a copy of which is attached hereto as **Exhibit A**. The settlement falls
21 within the range of reasonableness and appears to be presumptively valid, subject only to any
22 objections that may be raised at the final fairness hearing and final approval by this Court.

23 5. A Final Fairness Hearing on the question of whether the proposed settlement,
24 attorneys' fees and costs to Class Counsel, and the Class Representative's Award Payment should
25 be finally approved as fair, reasonable and adequate as to the members of the Class is scheduled in
26 Department 11 on the date and time set forth below.

27 6. The Court makes the following preliminary findings and observations: (1) the
28 settlement amount appears at this stage to be fair and reasonable to the Class Members when

1 balanced against the risks of further litigation relating to class certification, summary judgment and
2 trial on liability and damages issues, potential appeals, and ultimate collection of the full potential
3 value of the claims; (2) it also appears that sufficient discovery and investigation have been
4 conducted, such that counsel for the Parties at this time are able to reasonably evaluate their
5 respective positions; (3) settlement at this time will avoid substantial costs, delay, and risks that
6 would be presented by the further prosecution of the litigation; and (4) the proposed Settlement is
7 the culmination of serious and non-collusive negotiations between the Parties. Accordingly, the
8 Court finds that the Settlement appears to have been entered into in good faith.

9 7. The Court approves ILYM Group Inc. as the Settlement Administrator.

10 8. This Court approves, as to form and content, the Notice of Class Action Settlement
11 in substantially the form attached as to the Settlement Agreement and attached as **Exhibit B** to this
12 Order.

13 9. The Court further finds that the Class Notice appears to fully and accurately inform
14 the Class Members of all material elements of the proposed Settlement, of the Class Members'
15 right and opportunity to be excluded from the Settlement, of the Class Members' right and
16 opportunity to challenge Defendant's records of workweeks worked, and of the Class Members'
17 right and opportunity to object to the Settlement.

18 **FORM AND TIMING OF NOTICE**

19 10. Within fourteen (14) calendar days after issuance of this Preliminary Approval
20 Order, Defendant shall provide the Administrator, in an electronically usable format, with the
21 Class Data (name, last-known mailing address, social security number and number of Class period
22 Workweeks and PAGA Pay periods).

23 11. Not later than fourteen (14) calendar days after receiving the Class Data, the
24 Settlement Administrator shall mail the Class Notice to all Class Members, substantially in the
25 form of Exhibit A (Notice), to this Preliminary Approval Order, by first-class mail postage prepaid.

26 12. The Court directs the mailing of the Notice in accordance with the implementation
27 schedule set forth in the Settlement Agreement and finds the dates selected for the mailing and
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1 distribution of the mailing of the Notice as set forth therein meet the requirements of due process
2 and provide the best notice practicable under the circumstances and shall constitute due and
3 sufficient notice to all persons entitled thereto.

4 13. Not later than (14) days before the date by which Plaintiff is required to file the
5 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
6 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
7 compliance with all of its obligations under this Agreement, including, but not limited to, its
8 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices,
9 attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it
10 received (both valid or invalid), the number of written objections and attach the Exclusion List.

11 14. The Court finds that the notice to be provided is the best means of providing notice
12 to the Class Members, is practicable under the circumstances and, when completed, shall constitute
13 due and sufficient notice of the Settlement and the Fairness Hearing to all persons affected by
14 and/or entitled to participate in the Settlement or the Fairness Hearing, in full compliance with the
15 requirements of due process and the California Rules of Court.

16 **ABILITY OF CLASS MEMBERS TO OPT OUT OF THE SETTLEMENT CLASS,**
17 **OBJECT TO THE SETTLEMENT AND/OR DISPUTE THEIR INDIVIDUAL PAYMENT**

18 15. Pursuant to Sections 7.5 of the Settlement Agreement and as set forth in the Class
19 Notice, Class Members shall have forty-five (45) calendar days from the date the Class Notice is
20 mailed to submit any Request for Exclusion in accordance with the procedures set forth in the
21 Notice. If a timely and valid Request for Exclusion is not received by the Settlement Administrator
22 from a Class Member on or before the Response Deadline, then that Class Member will be deemed
23 to have forever waived his or her right to seek exclusion from the Settlement and Settlement Class
24 and shall be bound by the Settlement and Judgment. Class Members who do validly request
25 exclusion from the Settlement by submitting a valid and timely Request for Exclusion shall not be
26 bound by the terms of the Settlement, shall not be allowed to object to the Settlement, and shall not
27 be entitled to any benefits as a result of the Settlement, except that Settlement Class Members who
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1 are in the PAGA Settlement Class will still receive his or her PAGA Payment and will release the
2 PAGA Claims.

3 16. Any Class Members who do not properly and timely exclude themselves from the
4 Settlement shall be included in the Class and, if the Settlement is approved and becomes effective,
5 shall be bound by all the terms and provisions of the Settlement Agreement, including but not
6 limited to the Release of Claims described therein.

7 17. Pursuant to Section 7.7.2 of the Settlement Agreement and the as set forth in Class
8 Notice, Class Members who do not submit timely and valid Requests for Exclusion may object to
9 the Settlement by appearing in Court (or hire an attorney to appear in Court) to present verbal
10 objections at the Final Approval Hearing. A Participating Class Member who elects to send a
11 written objection to the Administrator must do so not later than (45) days after the Administrator's
12 mailing of the Class Notice (plus an additional (14) days for Class members whose Class notice
13 was re-mailed).

14 18. A hearing (the "Fairness Hearing") shall take place before this Court, on the date
15 and time set forth below, to determine:

- 16 a) Whether the Court should permanently certify the Settlement Class;
- 17 b) Whether the Settlement, on the terms and conditions provided for in the
18 Settlement Agreement, should be finally approved by the Court as fair,
19 reasonable and adequate;
- 20 c) Whether the application for a service award for representative Zepeda should be
21 approved;
- 22 d) Whether the application for attorneys' fees and expenses to be submitted by
23 Class Counsel should be approved; and
- 24 e) Such other matters as the Court may deem necessary or appropriate. The Court
25 may finally approve the Settlement at or after the Fairness Hearing with any
26 modifications agreed to by the Parties and without further notice to the Class
27 Members.

19. Any Class Member who has not requested to be excluded from the Settlement, and any other interested person, may appear at the Fairness Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at the Fairness Hearing. Any documents filed with the Court must also be served on counsel, by any method authorized under the California Code of Civil Procedure.

20. Any responses to any written objections to the Settlement and any other matter in support of the Settlement shall be filed with the Court no later than _____.


21. The Court may adjourn the Fairness Hearing, including the consideration of the application for the payment of a service payment to the Class Representative and for attorneys' fees and expenses, without further notice of any kind other than an announcement of such adjournment in open court at the Fairness Hearing or any adjournment thereof.

22. A Fairness Hearing in this Court is set for _____, 2024.

23. The Court HEREBY GRANTS preliminary approval of the class action settlement as set forth above.

IT IS SO ORDERED.

DATED: 06/24/2024


HON. DAVID S. CUNNINGHAM III
JUDGE OF THE SUPERIOR COURT