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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

DANIEL FLANNERY; individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

MCCORMICK & SCHMICK'S SEAFOOD RESTAURANTS, INC., an unknown business entity; MCCORMICK & SCHMICK RESTAURANT CORP., an unknown business entity; LANDRY'S RESTAURANTS, INC.; an unknown business entity; LANDRY'S, INC. ; an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: BC487942

Honorable Kenneth R. Freeman
Department 310

[~~REVISED PROPOSED~~] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL APPROVAL OF ATTORNEYS' FEES, COSTS AND INCENTIVE AWARD AND JUDGMENT THEREON

Date: May 6, 2014
Time: 2:00 p.m.
Dept: 310

On or about July 9, 2013, Plaintiff Daniel Flannery ("Plaintiff"), individually and on behalf of the Settlement Class, and Defendants McCormick & Schmick's Seafood Restaurants, Inc., McCormick & Schmick Restaurant Corp., and Landry's, Inc., erroneously sued as Landry's Restaurants, Inc. (collectively, "Defendants") (together with Plaintiff, the "Parties") entered into a class action settlement (the "Settlement"), the terms and conditions of which are set forth in the Stipulation of Class Action Settlement between Plaintiff and Defendants (the "Agreement"). This matter having come before the Honorable Kenneth R. Freeman on May 6, 2014 at 2:00 p.m. for the Final Approval Hearing on Plaintiff's Motion for Final Approval of Class Action Settlement and Plaintiff's Motion for Final Approval of Attorneys' Fees, Costs, and Incentive Award, due and adequate notice having been given to Class Members as required by the Court's Preliminary Approval Order dated September 20, 2013. Edwin Aiwazian, Esq. and Arby Aiwazian, Esq. appeared on behalf of Plaintiff. Andrew R. Hunter, Esq. appeared on behalf of defendants McCormick & Schmick's Seafood Restaurants, Inc., McCormick & Schmick Restaurant Corp. and Landry's, Inc. C. Benjamin Nutley, Esq. appeared on behalf of Objector John W. Davis.

The Court, having considered all the papers filed and proceedings herein, having determined that the Settlement is fair, adequate and reasonable, and otherwise being fully informed, adopted the tentative ruling as the Court's "Final Order," attached hereto as Exhibit 1, **and ORDERED as follows:**

1. The Court overrules the objections of John W. Davis, except as to the scope of the class definition.

2. The Court overrules the objections of Ms. Michelle Garza.

3. All terms used herein shall have the same meaning as given them in the Agreement except the scope of the class definition shall be limited to Defendants' McCormick & Schmick's restaurants only.

4. The Court has jurisdiction over the subject matter of this proceeding and over all Parties to this proceeding, including all Class Members.

5. The Court hereby unconditionally certifies the Settlement Class, as set forth in the Settlement, for purposes of this settlement only.

6. Proving of Notice, directed to the Class Members as set forth in the Preliminary Approval Order has been completed in conformity with the Preliminary Approval Order, including the best notice practicable under the circumstances. The Notice provided due and adequate notice of the proceedings and of the matters set forth in the Preliminary Approval Order, including the proposed Settlement as set forth in the Agreement. The Notice provided adequate and appropriate notice to all persons entitled to such notice, and therefore fully satisfied the requirements of due process. All Settlement Class Members and all Released Claims are covered by and included within the Settlement and within this Final Approval Order.

7. The Court finds that the Settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations and the Settlement was entered into in good faith. The Court further finds that the Settlement is fair, reasonable, and adequate, and that Plaintiff has satisfied the standards and applicable requirements for final approval of this class action Settlement under California law.

8. The Court hereby approves the Settlement as set forth in the Agreement and directs the parties to effectuate the Settlement according to the terms set forth in the Agreement. In granting final approval of the Agreement, the Court considered the nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation of settlement proceeds among the Settlement Class Members, and the fact that a settlement represents a compromise of the parties' respective positions rather than the result of a finding of liability at trial. Additionally, the Court finds that the terms of the Agreement have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member.

9. As of the date of this Final Approval Order, except as to such rights or claims that may be created by the Settlement, each and every Released Claim of each Class Member who did not timely submit a valid opt-out request is and shall be deemed to be conclusively released as against the Released Parties (as those terms are defined in the Agreement).

10. Neither the Settlement nor any of the terms set forth in the Agreement constitute an admission by Defendants, or any of the other Released Parties, of liability to the Settlement Class Representative or any other Settlement Class Member, nor does this Final Approval Order constitute a finding by the Court of the validity of any of the claims alleged in the Lawsuit, or of any liability of Defendants or any of the other Released Parties.

11. The Court hereby finds the Settlement provided for in the Agreement to be fair, reasonable and adequate.

12. The Court hereby confirms Kevin Shenkman, Esq. and Mary Ruth Hughes, Esq. of Shenkman & Hughes and Edwin Aiwazian, Esq., and Arby Aiwazian, Esq., of Lawyers *for* Justice, P.C. as Class Counsel.

13. Pursuant to the terms of the Agreement, and the authorities, evidence, and argument set forth in Class Counsel's application, an award of attorneys' fees and costs in the amount of $90,000, as final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel is hereby granted. The Court finds that Class Counsel's request falls within the range of reasonableness and that the result achieved justifies the award. The payment of fees and costs to Class Counsel shall be made in accordance with the terms of the Agreement and pursuant to the agreements between Class Counsel.

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14. The Court also hereby approves Plaintiff Daniel Flannery as the Settlement Class Representative and orders payment to Plaintiff for his service as a named Plaintiff the sum of $2,000. The payment of the Settlement Class Representative's service payments shall be made in accordance with the terms of the Agreement.

15. The Court hereby authorizes and directs the Settlement Administrator, Kurtzman Carson Consultants ("KCC"), to distribute the appropriate comp cards to all of the Settlement Class Members who have submitted timely and valid claims in accordance with the terms of the Agreement.

16. The Court further approves the payment of $10,000 to KCC for the costs of administering the Settlement as set forth in the Agreement. The payment authorized by this paragraph shall be made in accordance with the terms of the Agreement.

17. If the Settlement does not become final and effective in accordance with the terms of the Agreement, this Final Approval Order and all orders entered in connection herewith, including the Judgment on this Order, shall be vacated and shall have no further force or effect.

JUDGMENT

18. Pursuant to California Rules of Court, rule 3.769(h), the Court hereby enters judgment consistent with, and as expressly set forth in, the terms of the Agreement in this action.

19. Kurtzman Carson Consultants shall post a copy of this signed Judgment for thirty (30) calendar days on its website in compliance with California Rules of Court Rule 3.771(b).

20. The Judgment does not apply to those individuals who were excluded from the Class in accordance with the Final Approval Order.

21. Pursuant to California Code of Civil Procedure Section 664.6 and Rule 3.769(h) of the California Rules of Court, this Court reserves exclusive and continuing jurisdiction over this action, the Class Representative, members of the Class, and Defendants for the purpose of;

a. supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Approval Order, the plan of allocation, the Final Approval Order, and the Judgment; and

b. supervising distribution of amounts paid under this Settlement.

IT IS SO ORDERED.

DATED: MAY 0 8 2014

KENNETH R. FREEMAN

Kenneth R. Freeman
Judge of the Superior Court

Exhibit 1

FLANNERY v. MCCORMICK & SCHMICK'S SEAFOOD RESTAURANTS, INC.
Case No.: BC487942
Hearing Date: May 6, 2014
Department 310

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR FEES, COSTS, AND INCENTIVE PAYMENT

Final Order

1) Grant motion for final approval

2) Grant attorney fees and costs in the amount of $90,000

3) Grant claims administration costs in the amount of $10,000

4) Grant request for an incentive payment in the amount of $2,000

5) Overrule the objections of Michelle Garza.

6) Overrule the objections of John W. Davis, except as to the scope of the class definition.

DISCUSSION

1. Background. This is a consumer class action brought on behalf of persons who purchased menu items purporting to contain real "Kobe" beef at Defendants' McCormick & Schmick's restaurants. The complaint alleges that Defendants' online and in-store menus misled consumers into believing that the menu items actually contained "Kobe" beef. The complaint further alleges that the menu items do not actually contain "Kobe" beef because the U.S. Department of Agriculture has banned its importation from Japan since 2010. Based on these allegations, Plaintiffs assert the following causes of action: (1) intentional misrepresentation; (2) negligent misrepresentation; (3) fraud; (4) violation of the False Advertising Act – Business & Professions Code §§17500, *et seq.*; and (5) violation of the Unfair Business Practices Act – Business & Professions Code §§17200, *et seq.*Following mediation, the parties entered into a *Stipulation of Class Action Settlement* (hereinafter, "settlement agreement").

2. *Dunk/Wershba* Factors. It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the

proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245. The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165-1166; *Wershba, supra,* 91 Cal.App.4th at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, Newburg on Class Actions §11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation* (Third) §30.42.With these standards in mind, the *Dunk/Wershba* factors are addressed in turn.

a. Strength of the plaintiff's case. Here, the comp cards and injunctive relief appear to be a fair, adequate, and reasonable compromise of Plaintiffs' claims. The comp cards will compensate class members for all or most of the purchase price of the Subject Food Products, which were generally priced between $8.95 and $14.95. Further, Plaintiffs' recovery at trial is potentially minimal in light of Defendants' defenses. For example, it is Defendants' position that "Kobe" beef is a "ubiquitous and generic term" used by the restaurant industry to refer to beef with a high marble content. [Aiwazian Decl. Re: Preliminary Approval, ¶¶32, 34.] Defendants further contend that no reasonable consumer would believe that the Subject Food Products contained real "Kobe" beef because the Subject Food Products were sold for a significantly lower price than real "Kobe" beef. [Id., ¶32.] Class counsel "recognized the realities of the[se] arguments" as well as the potential problems of proof (e.g., producing receipts and showing that customers actually believed that the Subject Food Products contained real "Kobe" beef and were induced to purchase the Subject Food Products). [Id.] Class counsel also considered the difficulty of proving intent as well as the possibility that a punitive damages award by the trier of fact will be subsequently stricken down [Id., ¶35.].This factor weighs in favor of final approval.

b. The risk, expense, complexity and likely duration of further litigation. Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. This factor weighs in favor of final approval.

c. The risk of maintaining class action status through trial. There is always a risk of decertification. [*Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").] This factor weighs in favor of final approval.

d. Amount offered in settlement. As part of the Court's analysis of this factor, the Court takes into consideration the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*, objectors to a class settlement argued the trial court

erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

Defendants have agreed to issue $15 and $10 comp cards and to change their business practices. Specifically, Defendants have changed the description of the Subject Food Products on McCormick & Schmick's menus from "Kobe beef" to "American Kobe Style beef." [Settlement Agreement, ¶21.] This factor weighs in favor of final approval.

d. Extent of discovery completed and stage of the proceedings. Prior to settlement, class counsel, *inter alia*: propounded "extensive written discovery;" interviewed putative class members; reviewed Defendants' online and in-store menus and marketing materials; researched the importation of Japanese beef; and obtained relevant information from Defendants (e.g., the number of McCormick & Schmick's restaurants, the frequency that the Subject Food Products were purchased, etc.). [Aiwazian Decl. Re: Preliminary Approval, ¶¶21-22.] This factor weighs in favor of final approval.

e. Experience and views of counsel. Class counsel is experienced in class action litigation, including consumer cases. [Id., ¶¶6-7; see also Shenkman Decl. Re: Preliminary Approval, ¶5.] This factor weighs in favor of final approval.

f. Reaction of the class members to the proposed class settlement. In connection with the motion for preliminary approval, Plaintiffs estimated that there are "nearly 22,000"[1] class members. [Motion for Preliminary Approval, 10:17-20.] Of these, 1,161 (5.28%) submitted claim forms,[2] 2 (.009%) opted out, and 2 (.009%) objected (see further discussion below). Overall, the response is positive. This factor weighs in favor of final approval.

3. Objections

a. Objector Michelle Garza. Ms. Garza filled out the pre-printed Objection Form and checked the box stating her intent to object to the settlement. [McComb

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[1] This is the number of Subject Food Products sold during the class period. Plaintiffs are "[a]ssuming that each sold Subject Food Product represents a Class Member." [Motion for Preliminary Approval, 10:18-20.]

[2] In response to the Court's request for supplemental briefing, the claims administrator submitted a supplemental declaration indicating that 17 claimants will receive $15 comp cards and 1,045 claimants will receive $10 comp cards. [Supplemental McComb Declaration, ¶2.]

Decl., Exhibit B (last page).] However, she did not specify any ground for objecting.

b. Objector John W. Davis. Mr. Davis objects on five different grounds:

First, citing to *In re Mercury Interactive Corp. Securities Litigation* (9th Cir. 2010) 618 F.3d 988, Mr. Davis objects to the fact that the objection deadline was *prior to* the filing of the motion for final approval and motion for attorney fees. [Objection to Proposed Settlement, §II.A.] He contends that, due to the timing, he has been deprived of the opportunity to evaluate the settlement and the fee request. [Id.] However, *In re Mercury* is distinguishable. For one, it involved Federal Rules of Civil Procedure, rule 23(h). "The plain text of th[at] rule requires a district court to set the deadline for objections to counsel's fee request on a date *after* the motion and documents supporting it have been filed." [In re Mercury at 993 (italics in original).] Mr. Davis does not point to an analogous rule to rule 23(h). Additionally, *In re Mercury* involved an astronomic sum of attorney fees. [*In re Mercury* at 995 ("*When $29.375 million is at stake*, and the interests of class counsel are in conflict with the interests of the class, it is the obligation of the district court to ensure that the class has an adequate opportunity to review and object to its counsel's fee motion and, potentially, to conduct discovery on its objections to the fee motion if the district court, in its discretion, deems it appropriate.") (italics supplied).] Lastly, Mr. Davis has indicated his intention to appear at the hearing, and thus, will still have an opportunity to raise his objections then. By contrast, the objector in *In re Mercury* did not attend the fairness hearing. [Id. at 991.]

Second, Mr. Davis contends that the class definition and the release are overbroad in that they include claims of customers at Defendants' other restaurants. [Objection to Proposed Settlement, §II.B.] As for the class definition, the reference to "*Defendants'* restaurant" is overbroad. [Settlement Agreement, ¶13.] In that regard, it must be clarified to apply only to "Defendants' *McCormick & Schmick's* restaurant."[3] As for the release, it applies to all claims "which were alleged, or which could have been alleged based on the facts and claims alleged, in the Action." [Settlement Agreement, ¶47.] Since the release is tethered to "the Action," which is specifically based on the sale of the Subject Food Products at McCormick & Schmick's restaurants,[4] there is no potential overbreadth problem.

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[3] Indeed, Mr. Davis recognizes that if the parties intended the class definition and release to apply to McCormick & Schmick's restaurants only, "the problem could be fixed by minor editing of the class definition and release." [Opposition to Plaintiff's Request to Strike, 8:8-10; see also 10:5-7 ("The problem would be eliminated easily by redefining the class to include only McCormick & Schmick's customers, rather than a class definition encompassing all of Landry's other restaurants' customers.").]

[4] See Complaint, ¶1.

Third, Mr. Davis argues that notice was "grossly deficient" because: (a) it provided no notice to customers at Defendants' other restaurants; and (b) it was not the "best notice practicable" as to McCormick & Schmick's customers. [Objection to Proposed Settlement, §II.C.] Since the settlement applies to customers of Defendants' McCormick & Schmick's restaurant only, Mr. Davis's first notice argument is unavailing. As for the second notice argument, as discussed in Section IV.A above, the adequacy of the in-restaurant notice is arguable. In his Opposition to Plaintiff's Request to Strike, Mr. Davis argues for the first time that the notice is deficient because "this case is governed by the [Consumers Legal Remedies Act (CLRA)]," but the notice procedures under the CLRA were not followed. [Opposition to Plaintiff's Request to Strike, 10:23-11:18.] Specifically, he argues that Civil Code §1781(d) requires notice by publication once a week for four consecutive weeks in a newspaper of general circulation in the county in which the transaction occurred. [Id.] However, the complaint does not allege a cause of action under the CLRA; instead, it alleges a cause of action under Business & Professions Code §17200, with violations of the CLRA as the predicate "unlawful . . . business act or practice." [Complaint, ¶63.] A cause of action under the CLRA is distinct from a cause of action under Business & Professions Code §17200. "'By proscribing "any unlawful" business practice, "[Business and Professions Code] section 17200 'borrows' violations of other laws and treats them as unlawful practices" that the [UCL] makes *independently actionable*.'" [*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1382.] Mr. Davis cites no authority that states that alleging violations of the CLRA as the predicate "unlawful . . . business act or practice" transforms the Business & Professions Code §17200 cause of action into a CLRA cause of action, such that the CLRA notice procedures apply.

Fourth, Mr. Davis contends that the comp cards are "of questionable value" and have uncertain terms. [Objection to Proposed Settlement, §II.D.] Mr. Davis's contentions are not well-taken. The comp cards have a value of either $15 or $10. Further, in response to the Court's request for supplemental briefing, the parties clarified that the comp cards have no expiration date and are fully transferrable. [Joint Supplemental Brief filed 9/6/13, §VI.B.] It should also be noted that in the Nordstrom Com'n Cases (2010) 186 Cal.App.4th 576, the Court of Appeal rejected the "argument that settlements involving coupons or merchandise vouchers are disfavored by California courts" as "not [being] supported by the relevant authorities." [Nordstrom Com'n Cases at 590 (citing to Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 52-55 [affirming approval of settlement which provided one month of free DVD rental service or one month of free upgrades to DVD rental service]; In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 710, 711-713 [affirming approval of settlement where 100 percent of settlement was paid in vouchers]; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 247 [coupons were fair portion of settlement also involving cash refunds, reimbursements, and reinstatement of free service]; Dunk v. Ford Motor Co. (1996) 48

Cal.App.4th 1794, 1802, 1804 [$400 coupon which could be applied against purchase price of new car, with no cash payable to the class members, was fair as settlement of claims that vehicles were defective].).]

Lastly, Mr. Davis contends that the record does not support the conclusion that the settlement is reasonable. [Objection to Proposed Settlement, §II.E.] Contrary to Mr. Davis's contention, the parties provided evidence in support of the relevant factors for assessing the reasonableness of the settlement. [See Section V, above.]

4. Attorneys' Fees. Class counsel requests $90,000 for attorney fees and costs. [Notice of Motion for Attorney Fees, 1:7-10.]

Here, the lodestar calculations are as follows:[5]

Timekeeper	Hours Spent	Hourly Rate	Total Lodestar
LAWYERS FOR JUSTICE, PC			
• Edwin Aiwazian	52.95	$600	$ 31,770.00
• Arby Aiwazian	55.00	$425	$ 23,375.00
SHENKMAN & HUGHES			
• Kevin Shenkman	85.75	$550	$ 47,162.50
TOTAL	193.70		$102,307.50

Based on the tasks reflected in the revised Task & Time Chart, 193.70 hours of attorney time appear to be reasonable for this almost 2-year-old case.

The hourly rates charged by Edwin Aiwazian and Kevin Shenkman appear to be reasonable and in line with the prevailing market rates. [Shenkman Decl. Re: Final Approval, ¶8 and Exhibits 1 and 2.] As for the hourly rate of Arby Aiwazian, it is higher than that of 4 to 7 year attorneys as shown in the Laffey Matrix, but is less than the average associate rate in Los Angeles. [Id.] Further, that rate has been approved in other cases. [Supplemental Aiwazian Declaration, ¶12.]

It appears that class counsel utilized skill in litigating this case, and by all accounts, have good reputations in the legal community -- there is no evidence before the Court to indicate that either attorney has a negative reputation in the legal community. It also appears that class counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases.

On balance, and for the foregoing reasons, the actual attorney fees of $102,307.50 can be deemed the lodestar. Based on the $102,307.50 lodestar, the attorney fee request of $80,591.05 ($90,000 - $9,408.95 for costs) results in a negative multiplier of .8.

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[5] See Supplemental Aiwazian Decl. Re: Final Approval, ¶5 and Exhibit A; Supplemental Shenkman Decl. Re: Final Approval, ¶2 and Exhibit A.

In *Dunk*, supra, 48 Cal.App.4th at 1808, the Court of Appeal stated that the percentage of recovery method "should only be used where the amount was a 'certain or easily calculable sum of money.'" There "the ultimate settlement value to the plaintiffs could be as high as $26 million, [but] the true value cannot be ascertained until the one-year coupon redemption period expires." [Id.] The court concluded that the settlement "is not the type of settlement that lends itself to the common fund approach." [Id.] Similarly, the settlement value here is not easily calculable. Although more than 1,000 class members submitted claims for $15 or $10 comp cards, it is uncertain how many of those class members will actually redeem the comp cards at McCormick & Schmick's restaurants.

Costs. Class counsel requests costs in the amount of $9,408.95. Class counsel's cost bill shows that the bulk of the costs were for mediation fees ($7,020.10), attorney services ($1,269.79), and complex fees ($1,000). [Aiwazian Decl. Re: Final Approval, ¶12 and Exhibit B.] The balance includes courier costs ($71.11), travel costs ($30), and postage ($17.95). [Id.] Since the costs appear reasonable and necessary to the litigation, the requested amount of $9,408.95 is granted.

Costs of Administration.

KCC estimates that, by the time of completion of settlement administration, its costs will be $22,309.60. [McComb Decl., Exhibit C.] Nevertheless, it requests $10,000 only, which is the settlement cap. [Id., ¶10.] Based on KCC's responsibilities (e.g., receiving responses, establishing the toll-free telephone number and settlement website, processing claims, distributing comp cards, and performing other settlement administration tasks), the $10,000 flat fee appears to be reasonable and is therefore granted.

D. Incentive Payment. Finally, class counsel seeks an incentive payment of $2,000 to the sole class representative.

The named Plaintiff indicates spending 20.5 to 23.5 hours performing tasks such as gathering information for use in this litigation, meeting with class counsel, communicating with class counsel and putative class members, and reviewing the terms of the settlement. [Flannery Decl. Re: Final Approval, ¶¶3-7.] In light of: (1) the named Plaintiff's contributions of time and effort in this almost 2-year-old case; (2) the named Plaintiff's execution of a general release; and (3) the benefits obtained on behalf of the class (comp cards and changes in Defendants' business practices), $2,000 is reasonable inducement for the named Plaintiff's participation in this case.

CONCLUSION

The settlement appears to be fair, adequate, and reasonable. The motion for final approval is granted. The following amounts are approved: $90,000 for attorney fees and costs; $10,000 for claims administration costs; and $2,000 for an incentive payment to the named Plaintiff.

The objections of Ms. Garza are OVERRULED.

The objections of Mr. Davis are OVERRULED, except for his objection to the scope of the class definition, which is SUSTAINED. The class definition is limited to Defendants' McCormick & Schmick's restaurants only.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On May 8, 2014, I served the foregoing document(s) described as follows: **ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL APPROVAL OF ATTORNEYS' FEES, COSTS AND INCENTIVE AWARD AND JUDGMENT THEREON** on interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows:

Andrew R. Hunter
VON BEHREN & HUNTER LLP
2041 Rosecrans Avenue, Suite 367
El Segundo, CA 90245
Telephone (310)607-9111
Facsimile (310) 615-3006

Attorneys for Defendants McCormick & Schmick's Seafood Restaurants, Inc., McCormick & Schmick Restaurant Corp., McCormick & Schmick's, Landry's Restaurants, Inc., and Landry's, Inc.

C. Benjamin Nutley
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Telephone (626) 204-4060
Facsimile (626) 204-4061

Attorney for Objector John W. Davis

Michelle Garza
43653 Windrose Place
Lancaster, California 93536

Objector

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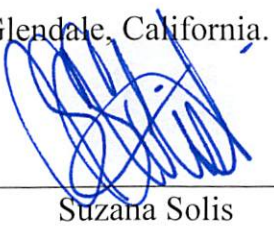
[X] **BY U.S. MAIL**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that 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 an affidavit.

[X] **STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 8, 2014, at Glendale, California.



Suzana Solis