

**Reyes v 600 W. 169th Rest, Inc.**

2018 NY Slip Op 32730(U)

October 22, 2018

Supreme Court, New York County

Docket Number: 159303/2016

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM**

*Justice*

-----X  
INDEX NO. 159303/2016  
MOTION DATE 09/12/2018  
MOTION SEQ. NO. 001

NOEL REYES, MATIAS RIVERA,  
CHARLES RESNICK and JONATHAN HERNANDEZ,  
on behalf of themselves and all others similarly situated,

Plaintiffs,

- v -

600 WEST 169TH REST, INC., d/b/a COOGAN'S, PETER WALSH,  
DAVID HUNT, VINCENT WALSH, and THERESA MCDADE

Defendants.

**DECISION AND ORDER**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 36

**PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT, CONDITIONAL CERTIFICATION OF  
THE SETTLEMENT CLASS, APPOINTMENT OF LEE  
LITIGATION GROUP, PLLC AS CLASS COUNSEL,  
AND APPROVAL OF THE PROPOSED NOTICE OF  
SETTLEMENT AND CLASS ACTION PROCEDURE**

were read on this motion to/for

The above-entitled matter came before the Court on Plaintiffs' Motion for Preliminary Approval of Settlement, Conditional Certification of the Settlement Class, Appointment of Lee Litigation Group, PLLC as Class Counsel, and Approval of the Proposed Notice of Settlement and Class Action Procedure ("Motion for Preliminary Approval").

**I. PRELIMINARY APPROVAL OF SETTLEMENT**

1. Based upon the Court's review of the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Settlement and the Affidavit of C.K. Lee ("Lee Aff.") and the exhibits attached thereto, including an amended proposed notice of settlement, and after conferencing with both sides on September 12, 2018, the Court grants preliminary approval of the settlement memorialized in the Settlement Agreement and Release ("Settlement Agreement"),

attached to the Lee Aff. as Exhibit A, with the proviso that any application by any Class Member to extend the Bar Date, as defined in paragraph 1.3, shall be subject to a ruling of the Court.

2. The Court concludes that the proposed Settlement Agreement is within the range of possible settlement approval, such that notice to the Class is appropriate.

3. The Court finds that the Settlement Agreement is the result of extensive, arm's length negotiations by counsel well-versed in the prosecution of wage and hour class and collective actions, and that the proposed settlement has no obvious deficiencies.

## **II. CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS**

4. The Court finds that this action satisfies all of the prerequisites of New York Civil Practice Law and Rules ("CPLR") § 901, and that consideration of the CPLR § 902 factors supports conditional certification.

5. The Court provisionally certifies the following class under Article 9 of the CPLR, for settlement purposes only ("Settlement Class"):

All current and former employees of the Defendants who performed work as non-exempt employees at Defendants' restaurant, at any time from October 20, 2011 through April 17, 2018.

## **III. APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL**

6. The Court appoints Lee Litigation Group, PLLC ("LLG") as Class Counsel because they did substantial work identifying, investigating, litigating, and settling Plaintiffs and the class members' claims, have years of experience prosecuting and settling wage and hour class actions, and are well-versed in wage and hour law and in class action law.

7. The work that LLG has performed both in litigating and settling this case demonstrates their commitment to the class and to representing the class's interests.

#### IV. CLASS NOTICE

8. The Court approves the proposed Amended Notice of Settlement of Class Action Lawsuit and Fairness Hearing ("Notice"), attached as NYSCEF Document Number 36, exhibit A, and directs its distribution to the Class.

9. CPLR § 908 requires that "[n]otice of proposed . . . compromise [of a class action] shall be given to members of the class in such manner as the court directs."

10. The content of the Notice fully complies with due process. The Notice describes the terms of the settlement, informs the class about the allocation of attorneys' fees and costs, and provides specific information regarding the date, time, and place of the final approval hearing.

#### V. CLASS ACTION SETTLEMENT PROCEDURE

11. The Court hereby adopts the following settlement procedure:

- a. Within ten days of the date of this Order, Defendants shall provide the Settlement Administrator with a list, in electronic form, of the names, last known addresses, social security numbers, and quarters of employment of all the putative Class Members (the "Class List");
- b. The Settlement Administrator shall mail the Notice to Class Members within 20 days of receiving the Class List;
- c. Class Members will have 45 days from the date the Notice is mailed to opt out of the settlement or object to the settlement ("Notice Period"), provided that Class Members for whom notices are returned as undeliverable will have an additional 30 days from the second mailing of Notice to opt out or object;
- d. Plaintiff will file a Motion for Final Approval of Settlement within 15 days of the fairness hearing;
- e. The Court will hold a final fairness hearing on February 14, 2019, at 9:30 a.m., in Part 29, located at 71 Thomas Street, Room 104, New York, New York 10013-3821, at the Supreme Court of the State of New York;
- f. If the Court grants Plaintiffs' Motion for Final Approval of the Settlement, the Court will issue a Final Order and Judgment. If no party appeals the Court's Final Order and Judgment, the "Effective Date" of the settlement will be 30 days after the Court enters its Final Order and Judgment;

g. If rehearing, reconsideration or appellate review is sought, the "Effective Date" shall be after all avenues of rehearing, reconsideration or appellate review have been exhausted and no further rehearing, reconsideration or appellate review is permitted, and the time for seeking such review has expired;

h. The Settlement Administrator may disburse settlement checks, in a manner, priority, and order to be set by the Court, to the Class Members, Court-approved attorneys' fees and costs, Court-approved Service Awards to Plaintiffs, and the Settlement Administrator's fee within 30 days of the Effective Date, but only at such time as the funds in the Settlement Administrator's escrow account are sufficient to cover the amount of the distribution; and

i. The parties shall abide by all other terms of the Settlement Agreement.

The foregoing constitutes the decision and order of the Court.

10/22/2018

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

*Robert D. Kalish*  
**HON. ROBERT D. KALISH, J.S.C.**  
**J.S.C.**