

Kakharov v Carmines Broadway Feast Inc.
2021 NY Slip Op 31625(U)
May 13, 2021
Supreme Court, New York County
Docket Number: 161839/2019
Judge: Paul A. Goetz
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

-----X

BOBUR KAKHAROV,

Plaintiff,

- v -

CARMINES BROADWAY FEAST INC., LITTLE FISH
INC., TIMES SQUARE BARBEQUE INC., JEFFREY BANK,
ALICE CUTLER

Defendants.

-----X

INDEX NO. 161839/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10
were read on this motion to/for MISCELLANEOUS.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED 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**

The above-entitled matter came before the Court on Plaintiff's Unopposed 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 Settlement 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 Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and the Declaration of C.K. Lee ("Lee Decl.") and the exhibits attached thereto, the Court grants preliminary approval of the settlement memorialized in the Settlement Agreement and Release dated March 9, 2020 and the Addendum

to Settlement Agreement and Release dated September 15, 2020 (together, the "Settlement Agreement"), attached to the Lee Decl. as **Exhibit A**.

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 is fair and reasonable and 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"): Named Plaintiff and (i) all individuals who worked as front-of-house tipped employees at any time from January 1, 2017 through and including October 22, 2019, at Carmine's Upper West Side location, at 2450 Broadway, New York, New York, comprised of not more than 160 individuals; and (ii) all individuals who worked as front-of-house tipped employees at any time from October 1, 2018 through and including October 22, 2019, at the Carmine's located in Times Square at 200 West 44th Street, New York, New York, comprised of not more than 350 individuals.

III. APPOINTMENT OF PLAINTIFF'S 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 Plaintiff's 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 Notice of Settlement of Class Action Lawsuit and Fairness Hearing ("Notice"), attached as **Exhibit B** to the Lee Decl., 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.

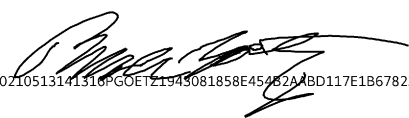
V. CLASS ACTION SETTLEMENT PROCEDURE

11. The Court hereby adopts the following settlement procedure:

- a. Within fourteen 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, last known telephone numbers, social security numbers, and dates of employment of all the putative Class Members (the "Class List");
- b. The Settlement Administrator shall mail the Notice to Class Members within 30 (30) days of the entry of this Order;
- c. Class Members will have 60 days from the date the Notice is mailed to opt out of the settlement or object to the settlement ("Notice Period");
- 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 **October 12, 2021 at 11:00 a.m. on Microsoft Teams**;
- f. If the Court grants Plaintiff's 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 "Final Effective Date" of the settlement will be 35 days after the Court enters its Final Order and Judgment;

- g. If rehearing, reconsideration or appellate review is sought, the "Final Effective Date" shall be after any and 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 to the Class Members, Court-approved attorneys' fees and costs, Court-approved Service Award to Plaintiff, and the Settlement Administrator's fee within fourteen (14) days of payment of the funding of the Settlement Account by Defendants in the Settlement Administrator's escrow; and
- j. The parties shall abide by all other terms of the Settlement Agreement.

SO ORDERED.



20210513141316PGOETZ1943081858E45482A1BD117E1B67823F5

5/13/2021		PAUL A. GOETZ, J.S.C.
DATE		
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED <input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:		<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE