

HONORABLE CATHERINE SHAFFER

Department 11

Noted on Motion Calendar: March 6, 2015 at 10:00 a.m.

With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

JOHANNES ROMATKA, ZACHARIAH
SHUGART, and THOMAS BUSCH,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BRINKER INTERNATIONAL PAYROLL
COMPANY, L.P., a Delaware Limited
Partnership; MAGGIANO'S HOLDING
CORPORATION, a Delaware Corporation dba
"MAGGIANO'S LITTLE ITALY,"

Defendants.

NO. 13-2-14937-1 SEA

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

WHEREAS, on November 19, 2014, this Court entered its Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order"); and

WHEREAS, individual notice complying with CR 23 was sent to the last-known address of each member of the Settlement Class, and follow-up procedures outlined in the

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION SETTLEMENT

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CASE NO. 13-2-14937-1 SEA

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1 Settlement Agreement and approved by the Preliminary Approval Order have been completed;
2 and

3 WHEREAS, a fairness hearing on final approval of the settlement was held before the
4 Court on March 6, 2015; and

5 WHEREAS, no objections to the Settlement were made by any member of the
6 Settlement Class; and

7 WHEREAS, the Court, being advised, finds that good cause exists for entry of the
8 below Order; now, therefore,

9 IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

10 1. Unless otherwise provided herein, all capitalized terms in this Order shall have
11 the same meaning as set forth in the Settlement Agreement attached as Exhibit 1 to the
12 Declaration of Marc C. Cote in Support of Preliminary Approval.

13 2. The Court finds that notice to the Settlement Class has been completed in
14 conformity with the Preliminary Approval Order. The Court finds that this notice was the best
15 notice practicable under the circumstances, that it provided due and adequate notice of the
16 proceedings and of the matters set forth therein, and that it fully satisfied all applicable
17 requirements of law and due process.

18 3. The Court finds it has personal and subject matter jurisdiction over all claims
19 asserted in this litigation with respect to all members of the Settlement Class.

20 4. Pursuant to CR 23, the Court has certified the following classes for settlement
21 purposes:

22 a. A "Settlement Class" consisting of all current and former hourly-paid,
23 non-managerial and non-supervisory employees who worked for Defendants at the Maggiano's
24 Little Italy Restaurant in Bellevue, Washington between March 28, 2010 and September 26,
25 2014;

1 b. An “Automatic Fee Sub-Class” consisting of Settlement Class members
2 who worked as banquet, catering and/or delivery service employees at the Maggiano’s Little
3 Italy Restaurant in Bellevue, Washington between March 28, 2010 and September 26, 2014;
4 and

5 c. A “Kitchen Employee Sub-Class” consisting of Settlement Class
6 members who worked as kitchen employees at the Maggiano’s Little Italy Restaurant in
7 Bellevue, Washington between March 28, 2010 and September 26, 2014.

8 5. In connection with this certification, the Court makes the following findings:

9 a. The Settlement Class and Sub-Classes are so numerous that joinder of all
10 members is impracticable;

11 b. There are questions of law or fact common to the Settlement Class and to
12 the Sub-Classes for purposes of determining whether this Settlement should be approved;

13 c. Plaintiffs’ claims are typical of the Settlement Class claims being
14 resolved through the Settlement; Plaintiffs Shugart and Romatka’s claims are typical of the
15 Automatic Fee Sub-Class claims being resolved; and Plaintiff Busch’s claims are typical of the
16 Kitchen Employee Sub-Class claims being resolved;

17 d. Plaintiffs are capable of fairly and adequately protecting the interests of
18 the Settlement Class members and Sub-Class members in connection with the Settlement;

19 e. For purposes of determining whether the settlement is fair, reasonable
20 and adequate, common questions of law and fact predominate over questions affecting only
21 individual Settlement Class and Sub-Class members. Accordingly, the Settlement Class and
22 Sub-Classes are sufficiently cohesive to warrant settlement by representation; and

23 f. For purposes of settlement, certification of the Settlement Class and Sub-
24 Classes is superior to other available methods for the fair and efficient settlement of the claims
25 of the Settlement Class and Sub-Class members.

1 6. The Court has appointed Johannes Romatka, Zachariah Shugart, and Thomas
2 Busch as representatives of the Settlement Class. The Court has appointed Johannes Romatka
3 and Zachariah Shugart as class representatives for the Automatic Fee Sub-Class. The Court has
4 also appointed Thomas Busch as class representative for the Kitchen Employee Sub-Class.

5 7. The Court has appointed Toby J. Marshall and Marc. C. Cote of Terrell Marshall
6 Daudt & Willie PLLC as Class Counsel.

7 8. No objections to the Settlement have been lodged.

8 9. The terms set forth in the Settlement are approved as being fair, adequate, and
9 reasonable in light of the degree of recovery obtained in relation to the risks faced by the
10 Settlement Class and Sub-Classes in litigating the claims. The Settlement Class and Sub-
11 Classes are properly certified as part of this settlement. The relief provided to the Settlement
12 Class and Sub-Classes under the Settlement Agreement is appropriate as to the individual
13 members of the Settlement Class and Sub-Classes and as a whole.

14 10. The Court approves the payment of \$225,000 in fees and costs to Class Counsel
15 as fair and reasonable based on the “percentage-of-recovery” approach for common fund
16 settlements like the settlement in this case. The benchmark in Washington for an attorney fee
17 award in a common fund class action settlement is 25 percent of the fund. *See Bowles v. Dep’t*
18 *of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). The approved attorney fee and cost award
19 of \$225,000 is 25 percent of the \$900,000 common fund. The Court has also performed a
20 lodestar cross-check, and this cross-check demonstrates that counsel’s request is reasonable
21 under the lodestar method. The Court reaches the conclusion that Class Counsel’s attorneys’
22 fees and costs are reasonable under the alternative lodestar method after analyzing (1) the
23 number of hours Class Counsel reasonably expended on the litigation (over 630) multiplied by
24 counsel’s reasonable hourly rates for this case (including the rates of \$300 for Marc Cote and
25 \$400 for Toby Marshall); (2) the substantial financial recovery for Settlement Class members;
26 (3) the diligent and efficient effort utilized by Class Counsel in litigating Plaintiffs’ claims; (4)

1 Class Counsel's substantial experience in complex litigation and skill utilized to achieve the
2 Settlement; (5) the hurdles to certifying the Settlement Class and Sub-Classes and proving
3 liability and damages at trial; (6) the substantial risks Class Counsel took in litigating this case;
4 (7) the high-quality work Class Counsel performed; and (8) the reasonable costs incurred by
5 Class Counsel in litigating this case. The requested fee represents a modest multiplier of
6 approximately 1.25 on Class Counsel's lodestar.

7 11. The Court approves the payment of \$16,086.17 in settlement administration
8 expenses to Terrell Marshall Daudt & Willie PLLC ("TMDW") as fair and reasonable to
9 compensate TMDW for their work and costs incurred in administering the settlement.

10 12. The Court approves the incentive payments of \$4,000 each to Plaintiffs
11 Johannes Romatka and Zachariah Shugart and \$1,000 to Plaintiff Thomas Busch. These
12 awards reasonably compensate Plaintiffs for their time and effort in stepping forward to serve
13 as proposed class representatives, assisting in the investigation, keeping abreast of the
14 litigation, and reviewing and approving the proposed settlement terms after consulting with
15 Class Counsel.

16 13. The Settlement is binding on all Settlement Class and Sub-Class members
17 except those who have properly excluded themselves from the Settlement.

18 14. Each member of the Settlement Class and Sub-Classes who made a valid claim
19 received by Class Counsel by March 6, 2015 shall be entitled to receive a pro rata share of the
20 Settlement Class and Sub-class funds as set forth in the Settlement Agreement. Any eligible
21 Settlement Class Member who fails to cash or deposit a disbursement check issued to that
22 member after a period of 120 calendar days has elapsed from the date on which the
23 disbursement check was issued will not receive a share of relevant class settlement funds but
24 will be bound nevertheless by the terms of the Settlement Agreement. Any funds for checks
25 that remain uncashed after 120 days will be donated as *cy pres* monies to the Legal Foundation
26 of Washington.

1 15. All Settlement Class Members, except those who have submitted a timely and
2 valid request for exclusion, are bound by the terms of the Settlement Agreement. As of the
3 Effective Date, the Settlement and the Settlement Agreement constitute a full and final
4 settlement and release of all claims against Defendants by the Named Plaintiffs and all
5 members of the Settlement Classes (including all members of the Settlement Class, the
6 Automatic Fee Sub-Class and the Kitchen Employee Sub-Class) that were brought or that could
7 have been brought based on any facts alleged in the Third Amended Complaint, except for
8 claims by those who have submitted a timely and valid request for exclusion. This Release
9 specifically includes any claims for wages, overtime, penalties, interest, fees, costs, attorneys'
10 fees and all other forms of relief that were sought or that could have been sought based on the
11 facts alleged in the Third Amended Complaint relating to missed, interrupted or
12 non-conforming rest periods or any assertions of rights relating thereto. For the Automatic Fee
13 Sub-Class, this Release also specifically includes any claims for tips, gratuities, service
14 charges, event fees, delivery fees, wages, penalties, interest, fees, costs, attorneys' fees, and all
15 other forms of relief that were sought or that could have been sought based on the facts alleged
16 in the Third Amended Complaint relating to any automatic fees imposed by Defendants on
17 their customers relating to food, beverage, entertainment, delivery and/or portage services or
18 any disclosures, communications, or assertions of rights relating thereto. For the Kitchen
19 Employee Sub-Class, this Release also specifically includes any claims for wages, overtime,
20 penalties, interest, fees, costs, attorneys' fees and all other forms of relief that were sought or
21 that could have been sought based on the facts alleged in the Third Amended Complaint
22 relating to any unpaid work time, unpaid overtime, or "off the clock" work arising out of or
23 relating to any meetings involving kitchen staff, or assertions of rights relating thereto. In
24 addition to the foregoing, as part of this Settlement, each of the Named Plaintiffs agrees, to the
25 fullest extent permissible by law, to enter a full and final settlement and release of all claims
26

1 arising out of or relating to the individual Plaintiff's employment at the Maggiano's Little Italy
2 restaurant in Bellevue, Washington.

3 16. The Parties and their counsel shall implement and consummate the Settlement
4 Agreement according to its terms and provision, including all payments to be made by Brinker
5 International Payroll Company, L.P. and Maggiano's Holding Corporation thereunder.

6 17. Neither this Order nor any aspect of the Settlement Agreement constitute any
7 admission of liability by Brinker International Payroll Company, L.P. and Maggiano's Holding
8 Corporation under state or federal law, whether or not such claims have been pled in the instant
9 action. Each of the Parties to the settlement entered into the Settlement Agreement with the
10 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

11 18. Only one potential Settlement Class Member, Bobbi Jo Meade, has excluded
12 herself from the Settlement Class.

13 19. This Court hereby dismisses this action with prejudice as to all Settlement Class
14 Members except those who have timely and properly excluded themselves from the Settlement
15 Class. The Clerk shall enter final judgment dismissing with prejudice all claims of Plaintiffs
16 and the Settlement Class members against Brinker International Payroll Company, L.P. and
17 Maggiano's Holding Corporation. This dismissal shall be without costs or attorneys' fees,
18 except as otherwise ordered here, to any Party.

19 20. The dismissal of the claims against Brinker International Payroll Company, L.P.
20 and Maggiano's Holding Corporation is without prejudice to the rights of the Parties to enforce
21 the terms of the Settlement Agreement and the rights of Class Counsel to seek the payment of
22 fees and costs as provided for in the Settlement Agreement. Without affecting the finality of
23 this Order, or the judgment to be entered pursuant hereto, in any way, the Court retains
24 jurisdiction over the claims against Brinker International Payroll Company, L.P. and
25 Maggiano's Holding Corporation for purposes of resolving any disputes that may arise under
26

1 the Settlement Agreement, settlement administration matters, and post-final judgment matters
2 as may be appropriate under court rules.

3 DATED this 6 day of March, 2015.

4 

5 Honorable Catherine Shaffer
6 Superior Court Judge

7 Presented by:

8 TERRELL MARSHALL DAUDT & WILLIE PLLC

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