

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CASSANDRA BRACKLEY, on behalf of herself and all	:
others similarly situated, and DANTE BUTLER,	:
individually,	:
	:
Plaintiffs,	:
- against -	:
	:
RED ROBIN GOURMET BURGERS, INC., RED ROBIN	:
INTERNATIONAL, INC, SWAN CONCEPTS, INC., RR	:
FAYETTEVILLE LLC, RR HALFMOON LLC, RR	:
LATHAM LLC, RR POUGHKEEPSIE LLC, JOHN A.	:
SWAN, JR., an individual,	:
	:
Defendants.	:
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[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

The above-entitled matter came before the Court on Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement and Conditional Certification of the Settlement Class (“Motion for Preliminary Approval”). After reviewing the Motion for Preliminary Approval, the supporting Memorandum of Law in Support of the Motion for Preliminary Approval (the “Memorandum”), the Declaration of Troy L. Kessler (“Kessler Decl.”) and supporting exhibits, and the Declaration of Andrew J. Santillo, the Court hereby finds as follows:

A. On February 14, 2017, Named Plaintiff Cassandra Brackley together with Opt-In Plaintiffs Kathleen Hempstead and Denise Gersitz (“Plaintiffs”) filed a Motion for Preliminary Approval with respect to a proposed Settlement Agreement and Release (“Settlement Agreement”).

B. In their Motion, Plaintiffs seek class certification for settlement purposes under Fed. R. Civ. P. 23 of all individuals employed as servers in the State of New York by Red Robin

Gourmet Burgers, Inc. or Red Robin International Inc. or Swan Concepts, Inc., RR Fayetteville LLC, RR Halfmoon LLC, RR Latham LLC, RR Poughkeepsie LLC, and/or John A. Swan, Jr. (collectively, “Defendants”) during the period January 20, 2010 to December 31, 2016.

C. This Court has considered all of the submissions presented with respect to the Settlement Agreement.

D. All capitalized terms in this Order with respect to the Settlement Agreement that are not otherwise defined have the same meaning as in the Settlement Agreement.

E. NOW THEREFORE, after due deliberation and for good cause, this Court hereby ORDERS that:

1. For the reasons set forth in Plaintiffs’ Memorandum of Law, this Court finds that the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a), and the predominance and superiority requirements of Rule 23(b)(3) have been met warranting class certification for purposes of effectuating settlement. The Court hereby certifies the following class for settlement purposes:

All individuals employed as servers in the State of New York by Red Robin Gourmet Burgers, Inc. or Red Robin International Inc. or Swan Concepts, Inc., RR Fayetteville LLC, RR Halfmoon LLC, RR Latham LLC, RR Poughkeepsie LLC, and/or John A. Swan, Jr., at any time during the period January 20, 2010 to December 31, 2016

2. The Court finds that the Settlement Agreement is fair, reasonable, and adequate and should be preliminarily approved. The settlement will ensure prompt payment to class and collective members and avoid the risks and expense of continued litigation.

3. The Court has reviewed the terms and conditions of the Settlement Agreement, including the monetary relief provisions, the plan of allocation, and the release of claims. Based on its review of the Settlement Agreement, Plaintiffs’ Memorandum of Law, and the Court’s familiarity with this case, the Court finds that the Settlement Agreement is the result of

extensive, arm's-length negotiations between the Parties after Plaintiffs' Counsel and Defendants' Counsel had fully investigated the claims and became familiar with the strengths and weaknesses of the claims. The assistance of a neutral supports the Court's finding that the settlement is not collusive. Based on all of these factors, the Court finds that the Settlement Agreement has no obvious defects and is within the range of possible settlement approval such that notice to the Class as set forth in the Settlement Agreement is appropriate.

4. The Court approves Shulman Kessler LLP and Winebrake & Santillo, LLC, as Class Counsel.

5. The Court approves Rust Consulting as the Claims Administrator.

6. The proposed Notice, attached as Exhibit B to Kessler Decl., fully and accurately informs the Class Members of all material elements of the action and the proposed Settlement.

7. The Court finds that the Settlement Agreement satisfies all the requirements for certification of a settlement class under Rule 23(a) and 23(b)(3).

8. The Parties propose to disseminate the Notice to the class via First Class United States Mail to the last known address of each class member, in accordance with Section 2.5(C) of the Settlement Agreement. The Court finds that the method of disseminating the Notice, as provided in the Settlement Agreement, is the best notice practicable under the circumstances and fully meets the requirements of federal law.

9. Based on the foregoing, the proposed Notice is hereby approved by the Court.

10. Within fourteen (14) days of the filing of this Order, in accordance with Section 2.5(A) of the Settlement Agreement, Defendants will provide the Settlement Claims Administrator with the Class List, which will include the number of tipped hours worked by each Class Member during the period January 20, 2010 through December 31, 2016.

11. Within twenty (20) days of this Order, the Claims Administrator will mail the approved Notice and Claim Forms to all Class Members, via First Class United States Mail.

12. Each Class Member shall have sixty (60) days from the mailing of the Notice to object to the settlement or opt out of the Settlement, with additional time for any Class Members to whom Notice was re-mailed, as set forth in Section 2.6(A) of the Settlement Agreement.

13. The Court will conduct a fairness hearing on 6/5/2017, 2017, at 11:00 A.M. [a.m./p.m.] to address: (a) whether the proposed Settlement Agreement should be finally approved as fair, reasonable, and adequate; (b) Class Counsel's application for attorneys' fees and costs; and (c) Plaintiffs' application for service payments.

14. The Court finds, pursuant to Fed. R. Civ. P. 54(b), that there is no just reason for delay, and directs the Clerk to enter this Order.

Dated this 2nd day of March, 2017.
Central Islip, New York

SO ORDERED:

/s/ Gary R. Brown

Hon. Gary R. Brown
United States Magistrate Judge