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The Honorable LeRoy McCullough

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

JESUS AYALA, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

WIDE OPEN, INC, a Washington company;
QUEENE ANNE DINER LLC, a Washington
company; DAVID MEINERT, in his
individual and corporate capacity,

Defendants.

No. 22-2-04873-5 SEA

~~PROPOSED~~ ORDER
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS, GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT,
AUTHORIZING NOTICE, AND
SETTING FINAL FAIRNESS HEARING

(CLERK'S ACTION REQUIRED)

This matter came before the Court on Plaintiff's Motion for Conditional Settlement Class Certification and Preliminary Approval of Class Action Settlement ("Plaintiff's Motion"). In conjunction with Plaintiff's Motion, Plaintiff have filed a copy of the Parties' signed Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement"), attached as Exhibit 1 to the Declaration of James B. Pizl in support of Plaintiff's Motion.

WHEREAS, the Court has considered Plaintiff's Motion, the Parties' signed Settlement Agreement, and all of the other pleadings, papers, and filings herein;

WHEREAS, as used herein, all terms defined in the Parties' Settlement Agreement shall have the same meaning here; and

1 WHEREAS, good cause appearing that the Parties' Settlement Agreement is within the
2 range of reasonableness and is presumptively valid,

3 1. NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

4 Pursuant to Washington Superior Court Civil Rule 23(a) and (b)(3), and in conjunction
5 with the Settlement Agreement, the Court hereby certifies this case as a class action, solely for
6 purposes of implementing the Parties' Settlement Agreement, on behalf of the following Proposed
7 Settlement Class:

8 All individuals currently or formerly employed by David Meinert, Wide
9 Open, Inc., or Queen Anne Diner LLC in the State of Washington and paid
 on an hourly basis at any time from April 5, 2019 through April 5, 2022.

10 The Settlement Class shall exclude any persons who opt out of the Settlement Class in accordance
11 with the terms of the Settlement Agreement and Paragraph 16 of this Order.

12 2. The Court finds that the prerequisites of CR 23(a) and (b)(3) have been satisfied for
13 the Settlement Class. Specifically, the Court finds as follows:

14 a. The Settlement Class, which consists of approximately 156 individuals, is
15 so numerous that joinder of all members is impracticable. In reaching this conclusion, the
16 Court has considered not just the number of Class members, but the interests of judicial
17 efficiency, the relatively small value of many Settlement Class Member claims, and other
18 factors relevant to the interest and ability of employees to individually join or bring claims
19 against a current or former employer.

20 b. There are questions of law and fact common to the Settlement Class,
21 including, but not limited to: whether Defendants violated WAC 296-126-092 by failing to
22 provide adequate rest breaks and meal periods to Plaintiff and members of the Settlement
23 Class; and whether Defendants was required to and failed to compensate Plaintiff and
24 members of the Settlement Class with additional wages when rest breaks and meal periods
25 were not provided in compliance with Washington law.
26

1 c. The claims of the Named Plaintiff are typical of the claims of the Settlement
2 Class, and the Named Plaintiff and Class Counsel will fairly and adequately protect the
3 interests of the Settlement Class.

4 d. Certification of a Settlement Class under CR 23(b)(3) is appropriate because
5 questions of law and fact common to all Settlement Class Members predominate over any
6 questions affecting only individual members, and a class action is superior to other
7 available means for the fair and efficient resolution of this controversy. Such common
8 questions of law and fact include, but are not limited to those identified in subparagraph
9 (b) above.

10 3. Pursuant to CR 23, Named Plaintiff Jesus Ayala is hereby appointed and
11 designated, for all purposes, as the Class Representatives of the Settlement Class, and James B.
12 Pizl of Entente Law PLLC and Damien Villarreal and Gregory Skidmore of Skidmore Fomina
13 PLLC are hereby appointed and designated as Class Counsel for the Settlement Class.

14 4. Class Counsel is authorized to act on behalf of the Settlement Class with respect to
15 all acts or consents required by or which may be required pursuant to the Settlement Agreement.

16 5. The Court approves the proposed form and content of the Notice of Proposed
17 Settlement of Class Action ("Class Notice") that is attached as Exhibit A of Exhibit 1 to the
18 Declaration of James B. Pizl.

19 6. The Court hereby appoints CPT Group Class Action Administrators as Settlement
20 Administrator responsible for establishing a Qualified Settlement Fund ("QSF") pursuant to IRC
21 § 468B(g), mailing and/or emailing Class Notices and settlement awards to Settlement Class
22 Members, processing and filing all appropriate tax forms and documents including but not limited
23 to W2s, 1099s, 1120-SF, etc.

24 7. Consistent with the terms of the Settlement Agreement, the Settlement
25 Administrator is hereby directed to email and mail, or cause to be mailed, by first-class mail, a
26

1 copy of the Class Notice to each Settlement Class Member no later than thirty (30) calendar days
2 following the date of this Order.

3 8. Pursuant to CR 23, the Court hereby finds and concludes that the form and manner
4 of giving notice by mailing a Class Notice to each individual Settlement Class Member, as required
5 by the Settlement Agreement and by this Order, is the best notice practicable under the
6 circumstances. Said notice procedures fully satisfy the requirements of CR 23(c)(2) and CR 23(e)
7 and the requirements of due process.

8 9. The Court conditionally approves Class Counsel's request for an attorneys' fees
9 award of \$120,000 or 37% of the gross Settlement Fund, plus actual and projected litigation costs
10 of \$5,000. This approval is preliminary and is subject to modification at the time of final settlement

11 approval upon a showing of appropriate cause, *and a showing that the percentage is 4M*
12 *within customary range.*

13 10. The Court preliminarily approves up to \$12,500 to be paid from the settlement fund
14 to compensate CPT Group Class Action Administrators for its services provided in the
15 administration of the settlement. This approval is preliminary and is subject to modification at the
16 time of final settlement approval upon a showing of appropriate cause.

17 11. The Court preliminarily approves an award of an incentive payment of \$7,500 to
18 Jesus Ayala in recognition of his role in this case and service to the Settlement Class. This approval
19 is preliminary and is subject to modification at the time of final settlement approval.

20 12. The Court preliminarily approves an award of \$12,500.00 to Jesus Ayala for the
21 full release of his known and unknown claims with Defendants. This approval is preliminary and
22 is subject to modification at the time of final settlement approval.

23 13. ⁵ January 8, 2024, at 9:00 a.m., a Final Settlement Approval Hearing shall be held
24 before the Honorable LeRoy McCullough at the King County Superior Court in Seattle,
25 Washington, to determine whether the Court should approve the fairness, adequacy, and
26 reasonableness of the terms and conditions of the Settlement Agreement and whether the Court
should enter the Parties' proposed Final Order and Judgment.

1 14. Pursuant to King County Local Court Rules, Plaintiff shall file memoranda or other
2 papers they may wish to submit in support of the proposed Settlement Agreement no later than
3 nine (9) court days before the Final Settlement Approval Hearing. The memoranda shall confirm
4 that the mailing of the Class Notice was completed in accordance with the requirements of this
5 Order and provide information concerning the individuals that have submitted valid and timely
6 claims or opted out of the settlement and any objections received. A draft copy of these pleadings
7 shall be provided to Defendants before filing.

8 15. Any person who wishes to receive payment under the terms of the Settlement
9 Agreement must do so by following the instructions for submitting a timely, valid claim as set
10 forth in the Class Notice. All claim forms from the Settlement Class must be postmarked, hand-
11 delivered, or emailed to the Settlement Administrator no later than thirty (30) days after the date
12 of mailing of the Class Notice, in accordance with the instructions in the Class Notice and the
13 terms and requirements of the Settlement Agreement, or they shall be deemed void and ineffective.

14 16. Any person who is eligible to exclude him or herself from the Settlement Class
15 under the terms of the Settlement Agreement must do so by following the instructions for
16 requesting exclusion as set forth in the Class Notice. All requests for exclusion from the Settlement
17 Class must be postmarked, hand-delivered, or emailed to the Settlement Administrator no later
18 than thirty (30) days after the date of mailing of the Class Notice, in accordance with the
19 instructions in the Class Notice and the terms and requirements of the Settlement Agreement, or
20 they shall be deemed void and ineffective.

21 17. Any Settlement Class Member may enter an appearance through counsel of such
22 Settlement Class Member's own choosing and at such Settlement Class Member's own expense.
23 Any Settlement Class Member who does not personally appear or otherwise enter an appearance
24 at the Final Settlement Approval Hearing shall be deemed to be represented by Class Counsel in
25 this litigation as provided above.

1 18. Any Settlement Class Member who has not validly requested exclusion may submit
2 written objections to the Settlement Agreement by mailing to the Settlement Administrator, at the
3 addresses provided in the Settlement Notice, a written statement containing the Settlement Class
4 Member's name, current address, and the substance of his or her objection (including any briefs
5 and supporting papers) no later than thirty (30) days after the date of mailing of the Class Notice.
6 Any Settlement Class Member who presents written objections in the manner prescribed above
7 may also appear personally or through counsel at the Final Settlement Approval Hearing to express
8 the Settlement Class Member's views regarding the Settlement Agreement. Only Settlement Class
9 Members who object to the Settlement Agreement in writing, in person, or by appearance through
10 counsel, in accordance with the procedures set forth in this Order, shall be permitted to appeal or
11 otherwise seek review of this Court's decision approving or rejecting the Settlement Agreement.
12 Failure to follow the procedures for objecting set forth herein shall constitute a waiver of a
13 Settlement Class Member's right to object to the Settlement Agreement.

14 19. Pending this Court's ruling on final approval of the Settlement Agreement, the
15 Named Plaintiff and all Settlement Class Members are enjoined from filing or prosecuting any
16 claims, suits or administrative proceedings regarding claims released in the Settlement Agreement,
17 unless and until the Court's final settlement approval hearing. As detailed in the Settlement, the
18 released claims specifically include, but are not limited to, any claims arising out of or relating to
19 any alleged unpaid hours worked or any missed, interrupted, shortened, untimely, unpaid, and/or
20 non-compliant rest breaks and/or meal periods, and any attendant claims for unpaid wages,
21 overtime payments, premium payments, interest, liquidated damages, exemplary damages, and
22 attorneys' fees and costs relating to any of the foregoing.


23 20. The Final Settlement Approval Hearing, and all dates provided for herein, may,
24 without further notice to the Settlement Class, be continued or adjourned by order of this Court.

25 21. Consistent with the Settlement Agreement, neither this Order, nor the fact or
26 substance of the Settlement Agreement, shall be considered a concession or admission, nor shall

1 they be used as evidence in any proceeding for the purpose of establishing Defendants' liability or
2 wrongdoing.

3 22. In the event the Settlement Agreement does not become effective in accordance
4 with the terms of the Settlement Agreement, or the Settlement Agreement is not finally approved,
5 or the Settlement Agreement is terminated, canceled, or fails to become effective for any reason,
6 this Order shall be vacated and rendered null and void, the Settlement Class shall be decertified,
7 and all claims and defenses previously asserted by the Parties shall be reinstated and the Court
8 shall enter further appropriate orders governing the proceedings and establishing a revised case
9 schedule in this matter.

10 IT IS SO ORDERED this 11th day of October, 2023

11
12 
13 The Honorable LeRoy McCullough
Judge, King County Superior Court

14 Presented by:

15 ENTENTE LAW PLLC

16 s/ James B. Pizl

17 James B. Pizl, WSBA #28969
Justin Abbasi, WSBA #53582
Ari Robbins Greene, WSBA #54201

18 SKIDMORE FOMINA PLLC

19 s/ Gregory M. Skidmore

20 Gregory M. Skidmore, WSBA #47462
Damien Villarreal, WSBA #50708
Attorneys for Plaintiff

22 Copy Received; Approved as to Form;
Notice of Presentation Waived:

23 Littler Mendelson, P.C.

24 /s/ Ryan Hammond

25 Ryan Hammond, WSBA #38888
Attorney for Defendant