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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SMILEDIRECTCLUB, LLC, a Tennessee
limited liability company; JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. 20STCV03799

*[Assigned for all purposes to Hon. Yvette M.
Palazuelos, Dept. SSC-9]*

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: August 4, 2021
Time: 10:00 a.m.
Dept.: SSC-9

Complaint Filed: January 30, 2020
Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Francisco Calderon (“Plaintiff”), individually and on behalf of a class of similarly
3 situated individuals, hereby submits this Supplemental Brief in Support of Plaintiff’s Motion for
4 Preliminary Approval of Class Action Settlement.

5 **I. PROCEDURAL HISTORY**

6 Plaintiff filed his Motion for Preliminary Approval of Class Action Settlement (“Motion”) on
7 or about March 2, 2021, which was set for hearing on May 17, 2021. *See* Supplemental Declaration of
8 Elizabeth Nguyen (“Supp. Nguyen Decl.”), ¶ 2. On May 13, 2021, the Parties received the Court’s
9 Tentative Ruling on Plaintiff’s Motion via email, identifying various issues to be addressed by the
10 Parties, and continued the hearing to August 4, 2021. *Id.* On May 17, 2020, the Court issued an order
11 confirming the Tentative Ruling. Accordingly, Plaintiff hereby submits the instant supplemental brief
12 to address the issues identified in the Court’s Tentative Ruling. *Id.* Each of the issues are addressed in
13 the same order as they are identified in the Tentative Ruling.

14 In connection with addressing the issues identified in the Tentative Ruling, the Parties have
15 modified the Stipulation of Settlement and Notice of Pendency of Class Action and Proposed
16 Settlement (referred to herein as “Amended Settlement”) and Plaintiff hereby submits the Amended
17 Stipulation of Settlement for Court approval. The following documents are being submitted
18 concurrently herewith as Exhibits to Supp. Nguyen Decl., as follows:

19 Attached as **Exhibit 1** to the Supp. Nguyen Decl. is the redlined version of the Amended
20 Stipulation of Settlement (without exhibits).

21 Attached as **Exhibit 2** to the Supp. Nguyen Decl. is the final version of the Amended Stipulation
22 of Settlement with the changes accepted and all exhibits, and signed by all Parties.

23 Attached as **Exhibit 3** to the Supp. Nguyen Decl. is the redlined version of the revised Notice
24 of Pendency of Class Action and Proposed Settlement.

25 Attached as **Exhibit 4** to the Supp. Nguyen Decl. is the final version of the revised Notice of
26 Pendency of Class Action and Proposed Settlement with the changes accepted.

27 **II. SECOND AMENDED COMPLAINT**

28 The Court ordered the Parties to file the Second Amended Complaint (“SAC”) as a stand-alone
document with the Court.

Accordingly, Plaintiff submitted the SAC for filing as a stand-alone document on May 14, 2021. *See Supp. Nguyen Decl.*, ¶ 2.

III. RELEASE OF CLAIMS

A. Release of Claims Alleged in, or Arising Out of Facts Asserted in, the Operative SAC

The Tentative Ruling states: “[m]odify the release of claims (¶ 4.A.) to specify the Class Members will only release claims alleged in, or arising out of the facts asserted in, the operative Second Amended Complaint.”

The Parties have revised paragraph 4.A of the Amended Settlement to state as follows:

Settlement Class Members’ Release: Settlement Class Members and Plaintiff will release and forever discharge all claims, demands, rights, liabilities and causes of action that were pled in, or arising out of facts asserted in, the operative Second Amended Complaint that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages due upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, “Released Claims”). Except as provided for under the Settlement Agreement, Class Members (who do not submit a timely Request for Exclusion) will not be eligible to receive or receive any additional wages or penalty payments based on the Released Claims from Defendants.

See Supp. Nguyen Decl., ¶ 3, Exhs. 1 – 2. The same change was made at page 5 of the Notice of Pendency of Class Action Settlement and Proposed Settlement. *See Supp. Nguyen Decl.*, ¶ 3, Exhs. 3 – 4.

B. Effective Date of the Release

The Tentative Ruling states: “[m]odify the effective date of the release (¶ 4.D.) to be the date on which Defendant fully funds the settlement.”

The Parties have revised paragraph 4.D of the Amended Settlement to state as follows:

The releases identified herein shall become effective on the date on which Defendants fully funds the settlement (“Effective Date of the Release”). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment (defined below) shall have, released, waived and relinquished the Released Claims.

1 See Supp. Nguyen Decl., ¶ 3, Exhs. 1 – 2. This language has also been added at page 5 of the Notice of
2 Pendency of Class Action Settlement and Proposed Settlement. See Supp. Nguyen Decl., ¶ 3, Exhs. 3
3 – 4.

4 C. Reference to Federal Claims

5 The Tentative Ruling states: “[t]he release purports to release claims under ‘federal’ law but
6 does not provide an opt in mechanism for such claims. Either provide an opt in mechanism, or remove
7 the reference to ‘federal’ claims. (See ¶ 4.A.)”

8 The Parties have revised paragraph 4.A of the Amended Settlement to omit the reference to
9 federal claims. See Supp. Nguyen Decl., ¶ 3, Exhs. 1 – 2. The release language at Page 5 of the Notice
10 of Pendency of Class Action Settlement and Proposed Settlement has been revised to mirror the release
11 language at paragraph 4.A of the Amended Settlement. See Supp. Nguyen Decl., ¶ 3, Exhs. 3 – 4.

12 D. Enjoining Future Lawsuits by Class Members

13 The Tentative Ruling states: “[e]liminate the language of the release that states that this court
14 will enjoin future lawsuits by class members. (See ¶ 4.D.) The court will not issue injunctive relief
15 against absent class members. The effectiveness of the release comes from satisfaction of due process
16 requirements for notice and an opportunity to opt out or be heard.”

17 The Parties have revised paragraph 4.D of the Amended Settlement to omit the following
18 language: “The Settlement Class Members (who do not submit a timely Request for Exclusion) shall be
19 enjoined from filing any actions, claims, complaints or proceedings against the Released Parties
20 regarding the Released Claims.” See Supp. Nguyen Decl., ¶ 3, Exhs. 1 – 2.

21 IV. NOTICE AND NOTICE ADMINISTRATION

22 A. Presumption that Notice has been Received

23 The Tentative Ruling states: “[r]emove the presumption that notice has been received if not
24 returned within 20 days of mailing. (See ¶ 12.G.) Efforts to locate updated addresses for returned
25 notices should continue throughout the 60-day notice period.”

26 Paragraph 12.G. of the Amended Settlement Agreement has been updated to omit the following
27 language: “It will be presumed that, if an envelope so mailed has not been returned within twenty (20)
28 days of the mailing, the Settlement Class member received the Notice Packet.” See Supp. Nguyen
Decl., ¶ 3, Exhs. 1 – 2.

The Tentative Ruling states: “[n]otice pg. 6 requires specific language to be used to opt out. Please revise so that no specific words are required.”

C. Information Regarding Check-cashing Deadline

The following language has been added to the Notice of Pendency of Class Action and Proposed Settlement (at page 4):

Each member of the Settlement Class who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will be transferred to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member.

See Supp. Nguyen Decl., ¶ 3, Exhs. 3 – 4.

For the foregoing reasons and the reasons discussed in Plaintiff's Motion for Preliminary Approval, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Amended Proposed Order submitted concurrently herewith.

Respectfully submitted,
LIDMAN LAW, APC

By: 
Elizabeth Nguyen
Attorney for Plaintiff
FRANCISCO CALDERON