

Electronically Received 09/21/2022 11:40 AM

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FILED
Superior Court of California
County of Los Angeles

09/28/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: D. Wortham Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARRIANA ZAPATA, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

SBE ENTERTAINMENT GROUP, LLC, a
limited liability company; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 20STCV28106

CLASS ACTION

[Hon. Elihu M. Berle, Dept. 6]

**~~AMENDED PROPOSED~~ ORDER
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: September 20, 2022

Time: 9:00 a.m.

Courtroom: SSC-06

Judge: Hon. Elihu M. Berle

Action Filed: July 23, 2020

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 Plaintiff MARRIANA ZAPATA (“Plaintiff”) and MORGANS HOTEL GROUP
3 MANAGEMENT, LLC (“Defendant”) have reached terms of settlement for a putative class action.

4 Plaintiff filed a motion for final approval of a class action settlement of the claims asserted
5 against Defendant in this action, memorialized in the JOINT STIPULATION OF CLASS ACTION
6 SETTLEMENT (*see* Declaration of H. Scott Leviant In Support of Plaintiff’s Motion for Final Approval
7 of Class Action Settlement [“Leviant Decl.”], at Exh. 1). The JOINT STIPULATION OF CLASS
8 ACTION SETTLEMENT is referred to herein as the “Agreement” or “Settlement.”

9 After reviewing the Agreement, the Notice process, and other related documents, and having
10 heard the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

11 1. The Court finds that the terms of the proposed class action Settlement are fair,
12 reasonable, and adequate, pursuant to California Code of Civil Procedure § 382. In granting final
13 approval of the class action settlement the Court has considered the factors identified in *Dunk v. Ford*
14 *Motor Co.*, 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v. Apple Computer, Inc.*, 91 Cal.
15 App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706 (2006). The Court
16 considered all such relevant factors for determining the fairness of the settlement, and concludes that
17 those factors weigh in favor of granting final approval. In particular, the Court finds that the Settlement
18 was reached following meaningful investigation conducted by Class Counsel; that the settlement is the
19 result of serious, informed, adversarial, and arm’s-length negotiations between the Parties; and that the
20 terms are in all respects fair, adequate, and reasonable. The Settlement Class meets the requirements for
21 conditional certification for settlement purposes only under Code of Civil Procedure § 382.

22 2. The Court finds that the Settlement has been reached as a result of intensive, serious and
23 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
24 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate
25 their respective positions. The Court also finds that settlement at this time will avoid additional
26 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
27 of the action. The Court finds that the risks of further prosecution are substantial.

1 3. The Class Notice provided to the Settlement Class complied with the requirements of
2 Code of Civil Procedure § 382, Civil Code § 1781, Rules of Court 3.766 and 3.769, the California and
3 United States Constitutions, and any other applicable law, and constituted the best notice practicable
4 under the circumstances, by providing individual notice to all Settlement Class Members who could be
5 identified through reasonable effort, and by providing due and adequate notice of the proceedings and
6 of the matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied
7 the requirements of due process.

8 4. The following persons are certified as Class Members solely for the purpose of entering
9 a settlement in this matter:

10 All non-exempt employees of Defendant who worked in California during the
11 Class Period at the Mondrian Los Angeles for any period of time (the “Class Period” is
July 23, 2016 through May 17, 2022).

12 (Settlement, ¶¶ 3-4.)

13 5. For purposes of this Settlement, “PAGA Employee” means all Class Members that
14 worked at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this
15 Settlement only, all PAGA Employees are “aggrieved employees” as defined pursuant to PAGA.
16 PAGA Employees cannot opt out of or object to the settlement of the PAGA claim.

17 6. Plaintiff MARRIANA ZAPATA is appointed the Class Representative. The Court
18 finds that Moon & Yang, APC, is adequate, as they are experienced in wage and hour class action
19 litigation and have no conflicts of interest with absent Class Members, and that they adequately
20 represented the interests of absent class members in the Litigation. Moon & Yang, APC, is appointed
21 Class Counsel.

22 7. No Settlement Class Members timely requested exclusion from the Class. All Class
23 Members are Settlement Class Members, bound by the Final Approval Order and Judgment.

24 8. Upon entry of this Final Approval Order and the subsequent Judgment, funding of the
25 Settlement and compensation to the Settlement Class Members shall be implemented pursuant to the
26 terms of the Settlement.

27 9. In addition to any recovery that Plaintiff may receive under the Settlement as Settlement
28 Class Members, and in recognition of the Plaintiff’s efforts on behalf of the Settlement Class, the Court

hereby approves the payment of an enhancement award to Plaintiff MARRIANA ZAPATA in the amount of **\$7,500.00**.

10. The Court approves the payment of attorneys' fees to Class Counsel in the amount of **\$166,666.67**, (which is one third of the adjusted Gross Settlement Amount of **\$500,000.00**). Litigation expenses are approved by the Court and awarded to Moon & Yang, APC in the amount of **\$14,818.54**.

11. The Court approves and orders payment in the amount of **\$11,600.00** to ILYM Group, Inc. for its services as the Settlement Administrator, as set forth in the Notice to the Class.

12. Upon completion of administration of the Settlement, the Parties shall file a declaration stating that all amounts payable under the Settlement have been paid and that the terms of the Settlement have been completed.

13. The Court sets an order to show cause hearing regarding compliance with all distribution requirements under the Settlement and this Order for May 22, 2023, at 8:30 a.m., in Dept. SSC-06 of the above-entitled Court. A Final Report, including any declaration from the Settlement Administrator regarding compliance, shall be filed with the Court no later than May 15, 2023.

14. The Court approves and orders payment in the amount of **\$45,000.00** to the Labor and Workforce Development Agency in compromise of claims under the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*).

15. Once Defendant fully fund the Settlement by paying all amounts due under the Settlement, Plaintiff and Settlement Class Members, shall have, by operation of this Final Approval Order and the separate Judgment, fully, finally and forever released, relinquished, and discharged Defendant from the Released Claims, described in the Settlement and as follows:

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively "Releasees").

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) all known and unknown claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands or suits which arise from the facts asserted in the Action, including, without limited to the foregoing, all claims under the California Labor Code as alleged in the Action, including violations for meal periods, rest breaks, unpaid overtime and minimum wages, timely payment of wages, wage statements, waiting time penalties, penalties under the Private Attorneys General Act sections 2698, et seq., and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.) or other remuneration whether sought under statute, tort, contract or as an unfair business practice ("Released Claims");

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,

3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, the Released PAGA Claims (see Paragraph 14 [of the Settlement]).

16. In accordance with California Rule of Court 3.771(b), Plaintiff is ordered to give notice of this final Order and Judgment to all Settlement Class Members by posting the Order and Judgment for 90 days on the Settlement Administrator's website and to the LWDA, pursuant to Labor Code § 2699(1)(3).

17. The Court retains jurisdiction to consider all further applications arising out of or in connection with the settlement.

IT IS SO ORDERED.



Elihu M. Berle

Dated: 9/28/2022

Elihu M. Berle / Judge

Hon. Elihu M. Berle
LOS ANGELES COUNTY SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[AMENDED PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

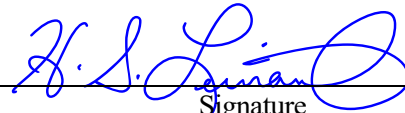
JACKSON LEWIS P.C.
Mia Farber
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Los Angeles, CA 90017
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Attorneys for Defendant

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **September 21, 2022** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature