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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

RAINY DAY FISHER, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

RLW PROPERTIES, LLC, d/b/a Zephyr Grill
& Bar, d/b/a Smith's Landing Seafood
Restaurant, a California limited liability
company; RLW PROPERTIES LLC
ZEPHYR'S GRILL/SMITH'S LANDING, a
business organization of form unknown;
ZEPHYR GRILL & BAR, a business
organization of form unknown; SMITH'S
LANDING, a business organization of a form
unknown; and DOES 1 through 50, inclusive,

Defendants.

Case No. C24-02017

CLASS ACTION

Assigned for all purposes to:

Hon. Charles S. Treat

Dept.: 12

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT
AGREEMENT**

Date:

Time:

Dept.: 12

Original Complaint filed: March 13, 2024

Venue Transfer: August 02, 2024

First Amended Complaint: December 04, 2024

Trial: none set

ORDER

Plaintiff Rainy Day Fisher (“Plaintiff”), on behalf of herself and other similarly situated employees of Defendants RLW Properties, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith’s Landing Seafood Restaurant (“Defendants”) (collectively, “the parties”), filed an unopposed Motion for Preliminary Approval of the parties’ Class and PAGA Action Settlement Agreement (“Settlement Agreement”). The Motion was set for hearing on _____ at _____ in Department 12 of the Contra Costa County Superior Court located at 725 Court Street, Martinez, CA 94553, and Defendant does not oppose it. The Court having considered the Settlement Agreement and the proposed Notice of Class Action and PAGA Settlement (“Notice”) at Exhibit A to the Settlement Agreement, the submissions of counsel, and all other papers filed in this litigation, and Defendant’s non-opposition to the Motion, hereby ORDERS as follows:

1. Plaintiff’s Motion for Preliminary Approval of the parties’ Settlement Agreement, which is attached at Exhibit 1 to the Declaration of Marta Manus, is GRANTED;

2. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein will have the same meaning as in this Order;

3. The Court conditionally certifies a Class consisting of “all non-exempt, hourly employees that worked for Defendants from April 13, 2020, through the date of the Preliminary Approval Order, or an earlier date as determined in accordance with the Settlement Agreement.” (“Class Period”). Participating Class Members are defined as all Class Members who do not timely submit a signed and valid Opt-Out Request to the Settlement Administrator. (Manus Decl., Exhibit 1, Settlement, p. 5). Should the Settlement not be finally approved, this Order will be rendered null and void and will be vacated, and the fact that the parties were willing to stipulate to class certification as part of the settlement will have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context. Should the settlement not become final, the parties will revert to their respective positions prior to notifying the Court of the settlement of the action.

4. The class action settlement contemplated by the Settlement Agreement is preliminarily approved based upon the terms set forth in the Settlement Agreement. The

1 Settlement appears to be fair, adequate, and reasonable for the Class and falls within the range of
2 reasonableness that could ultimately be granted final approval by the Court. The preliminary
3 approval of the class action settlement includes the approval for purposes of the Settlement of
4 Emil Davtyan, David Yeremian, Alvin B. Lindsay, and the other attorneys of D.Law, Inc. as
5 Class Counsel, Plaintiff Rainy Day Fisher as Class Representative, and Apex Class Action
6 (“Apex”) as the Administrator. Class Counsel is authorized to act on behalf of the Class Members
7 with respect to all acts or consents required by or which may be given pursuant to the Settlement
8 Agreement, and such other acts reasonably necessary to consummate the settlement. The
9 Settlement Administrator is authorized to perform such acts as set forth in this Order and the
10 Settlement Agreement.

11 5. The Court approves the parties’ allocation of \$10,000.00 to settle claims under the
12 Labor Code Private Attorneys General Act of 2004 (“PAGA”). Pursuant to Labor Code § 2699(i),
13 75% of this amount, or \$7,500.00, will be paid to the California Labor & Workforce
14 Development Agency, and the remaining 25%, or \$2,500.00, will remain in the Net Settlement
15 Amount to be distributed to the Settlement Class Members by the Settlement Administrator in
16 connection with the checks for their Individual Settlement Payment. (Manus Decl., Exhibit 1,
17 Settlement, p. 5).

18 6. The Notice, attached as Exhibit A to the Settlement Agreement, which is Exhibit 1
19 to the Manus Declaration, advises the Class of the material terms and provisions of the
20 Settlement, the procedure for approval thereof, and their rights with respect thereto, and is
21 approved as to form and content. The Court approves the procedures set forth in the Settlement
22 Agreement for Class Members to participate in, opt out of, and object to the Settlement as set
23 forth in the Notice.

24 7. The Notice will be sent in a Notice Packet by first-class mail to the Class members
25 in accordance with the schedule set forth in the Settlement Agreement. The dates selected for the
26 mailing and distribution of the Class Notice, and the other dates as set forth below, meet the
27 requirements of due process and provide the best notice practicable under the circumstances, and
28 will constitute due and sufficient notice to all persons entitled thereto:

1 a. Deadline for Defendant to provide the class information lists to Administrator the
2 Class Data and related information in the form of a Microsoft Excel spreadsheet: no later than
3 thirty (30) calendar days after entry of the Court's Order granting preliminary approval to the
4 Settlement.

5 b. Deadline for the Administrator to mail the Class Notice by first-class regular U.S.
6 mail: no later than five (5) calendar days after receipt of the Class Data from Defendant.

7 c. Deadline for class members to mail objections or requests for exclusion to the
8 Administrator: forty-five (45) days after the mailing of the Class Notice.

9 d. Deadline for Administrator to pay PAGA Settlement Payments from the PAGA
10 Settlement fund: within ten (10) days of the receipt by the Administrator of the Gross Settlement
11 Amount.

12 e. Deadline for Administrator to re-mail Class Notice when any Class Notice is
13 returned as non-delivered on or before the response deadline: within five (5) calendar days of
14 determining that a Notice was undeliverable.

15 f. Deadline for Class Members who receive a re-mailed Class Notice to mail
16 objections or request for exclusions: extended fourteen (14) calendar days from the original
17 Response Deadline.

18 g. Defendant shall fully fund the Gross Settlement Amount and also fund the
19 amounts necessary to fully pay Defendant's share of payroll taxes in two equally-divided
20 payments; (1) by transmitting \$205,000.00 of the funds to the Administrator no later than sixty
21 (60) days after the Effective Date; and (2) by transmitting \$205,000.00 of the funds to the
22 Administrator no later than sixty (180) days after the first payment.

23 h. Deadline for Administrator to mail Individual Settlement Payments by regular
24 First-Class U.S. Mail to Settlement Class Members' last known mailing address: within ten (10)
25 days of receipt of the Gross Settlement Amount.

26 i. Deadline for the Administrator to pay class representative service payment to
27 Plaintiff Rainy Day Fisher: no later than ten (10) days following the receipt of the Gross
28 Settlement Amount by the Administrator from Defendant.

j. Deadline for Class Counsel to file a Motion for Final Approval of the Settlement Agreement: 16 Court days before the hearing on Plaintiff's Motion for Final Approval and Motion for Attorneys' Fees and Costs and Class Representative Service Award.

k. Deadline for Class Counsel to file Motion for Attorneys' Fees and Costs and Representative Service Award within Motion for Final Approval: 16 Court days before Final Settlement Fairness Hearing and hearing on Plaintiff's Motion for Final Approval and Motion for Attorneys' Fees and Costs and Class Representative Enhancement.

8. A Final Approval and Settlement Fairness Hearing on the question of whether the proposed Settlement, attorneys' fees and costs to Class Counsel, and the class representative service award and Settlement Administration costs should be approved as fair, reasonable, and adequate as to the Settlement Class and whether the Settlement should be given final approval is scheduled on: _____, 2025 at _____.m. At the final approval hearing, Participating Class Members may be heard orally in support of the Settlement, or in opposition to the Settlement in the event there are objectors.

9. The Court reserves the right to adjourn or continue the date of the Settlement Fairness and Final Approval Hearing and all dates provided for in the Settlement Agreement without further notice to the Class and retains jurisdiction to consider all further applications arising out of or connected with the Settlement Agreement.

10. The Settlement Agreement will not be construed as an admission or evidence of either liability or the appropriateness of class certification in the non-settlement context, as more specifically set forth in the Settlement Agreement. Entry of this Order is without prejudice to the rights of Defendant to oppose certification of a class in this action should the proposed Settlement not be granted final approval.

11. As of the Effective Date, and in accordance with the Settlement Agreement, all Class Members who do not timely submit a Request for Exclusion from the Settlement will be deemed to have forever released and discharged the Released Class Claims as set forth in the Settlement Agreement. In the event the Effective Date does not occur for any reason, the Settlement Agreement will be deemed null and void and will have no effect whatsoever.

1 12. All further proceedings in this action are stayed except such proceedings necessary
2 to review, approve, and implement this Settlement.

3 13. The Court finds that all required notifications and submissions to the California
4 Labor and Workforce Development Agency (“LWDA”) about the Settlement Agreement and
5 Motion have been made by Plaintiff in the time and manner specified under the PAGA.

6
7 **IT IS SO ORDERED.**

8
9 Dated: _____

Hon. Charles S. Treat
Judge of the Superior Court