

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

CHRISTOPHER WALTER, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

FORT WASHINGTON PA 693, LLC;
FRIENDLY'S RESTAURANT
NORRISTOWN, PA (#897), LLC; KHALED
KEZBARI; and DOE DEFENDANTS 1-10,

Defendants.

Civil Action No. 2:17-cv-00178

**ORDER GRANTING PRELIMINARY APPROVAL OF
CLASS AND COLLECTIVE ACTION SETTLEMENT**

Before the Court is Plaintiff's Unopposed Motion for Preliminary Approval of Settlement seeking preliminary approval of the settlement (the "Settlement") of this class action asserting alleged violations of the Pennsylvania Minimum Wage Act ("PMWA"), the Pennsylvania Wage Payment and Collection Law ("PWPCCL"), Pennsylvania common law claims, and a collective action asserting alleged violations of the Fair Labor Standards Act ("FLSA"). The terms of the Settlement are set out in the Joint Stipulation of Settlement and Release Agreement ("Settlement Agreement"), attached as "Exhibit A," that has been executed by Plaintiff and Defendants and filed with the Court. Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

The Court, having considered the requirements of Federal Rule of Civil Procedure 23 and the papers and Memorandum of Law filed in support of Plaintiff's Motion to Preliminarily Approve Settlement ("Preliminary Approval Motion"), including specifically the parties' Settlement Agreement, hereby **ORDERS** as follows:

I. CLASS FINDINGS

The Court PRELIMINARILY FINDS, for purposes of this Settlement only, that the requirements of the Federal Rules of Civil Procedure and any other applicable law have been met as to the proposed Settlement Class, in that:

a) The Settlement Class numbers approximately 46 individuals and, therefore, is so numerous that joinder would be impracticable;

b) Based on the allegations in the Complaint, there are one or more questions of fact and/or law common to the Settlement Class. Plaintiff alleges that, among other things, Defendants failed to properly pay Tipped Employees by failing to satisfy the notice requirements of the tip credit provisions in federal and state law. As such, Plaintiff alleges Tipped Employees were not paid the mandated minimum wage for each and every hour worked.

c) The Plaintiff will fairly and adequately protect the interests of the Settlement Class in that: (i) the interests of the Plaintiff and the nature of his claims are consistent with those of all members of the Settlement Class; (ii) there appear to be no conflicts between or among the Plaintiff and the members of the Settlement Class; and (iii) the Plaintiff and the members of the Settlement Class are represented by qualified counsel who are experienced in prosecuting complex class actions, including wage and hour class actions such as this;

d) The prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual members of the Settlement Class that would establish incompatible standards of conduct for the parties opposing the claims asserted in the case; and (ii) adjudications as to individual members of the Settlement Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' abilities to protect their interests; and

e) Common issues of law and fact predominate over any potential individual issues, as the predominant issue is whether Defendants paid Tipped Employees in accordance with applicable wage laws.

II. CLASS CERTIFICATION

Based on the findings set out above, the Court hereby certifies the following Class for settlement purposes only:

Any current or former Tipped Employee employed by Defendants within the Commonwealth of Pennsylvania who worked one or more hours during the period of time between January 12, 2014 and January 12, 2017. Excluded from this Settlement Class are all persons who submit a timely and valid Request for Exclusion.

As noted above, Plaintiff Christopher Walter is an adequate and typical class representative, and the Court hereby appoints him as class representative for the Settlement Class.

As required by Fed. R. Civ. P. 23(g), the Court also has considered: (i) the work Class Counsel has done in identifying or investigating potential claims in the case; (ii) Class Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this case; (iii) Class Counsel's knowledge of applicable wage laws, including the FLSA, PMWA, and PWPCCL, and how those laws apply to the claims in this case; and (iv) the resources Class Counsel has committed to representing Plaintiff in this case. Based on these factors, the Court finds that Class Counsel has and will continue to represent fairly and adequately the interests of the Settlement Class. Accordingly, pursuant to Fed. R. Civ. P. 23(g)(2), the Court designates Connolly Wells & Gray, LLP and Kalikhman and Rayz, LLC as Class Counsel with respect to the Settlement Class.

III. PRELIMINARY APPROVAL OF SETTLEMENT

The proposed settlement between the parties documented in the Settlement Agreement, attached as "Exhibit A," appears to be fair, reasonable and adequate and in the best interests of the

Settlement Class. The Settlement Agreement provides that Defendant will pay \$132,000.00 to settle the litigation, a sum that includes Class Counsel's fees and costs. The Court finds that the terms embodied in the Settlement Agreement are sufficiently within the bounds of reasonableness so that notice of the settlement should be given as provided in this Order.

IV. FINAL APPROVAL HEARING

A Final Approval Hearing pursuant to Federal Rule of Civil Procedure 23(e) is hereby scheduled for Thursday, July 12, 2018, at 4:00 in Courtroom 9-B, United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania 19106, to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should receive final approval by the Court for settlement purposes only; whether the Settlement Class and its representation by the Plaintiff and Class Counsel satisfy the requirements of Rule 23; whether Class Counsel's application for an award for attorneys' fees and reimbursement of litigation expenses and service award for Plaintiff should be granted; and any other issues necessary for final approval of the Settlement.

Any member of the Settlement Class who has not filed a notice of exclusion as set forth below may appear at the Final Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support or in opposition to the fairness, reasonableness and adequacy of the proposed settlement or the other matters to be considered. No person will be heard unless such person has filed with the Court and served upon Class Counsel and Defendants' Counsel a Notice of Intent to Appear that (a) states how much time the member of the Settlement Class anticipates needing to present the objection; (b) identifies, by name, address, and telephone number all witnesses the Class Member proposes to have testify; (c) summarizes the anticipated testimony of all such witnesses; (d) identifies all papers, exhibits, or other submissions the Class

Member intends to offer; and (e) attaches complete copies of all such papers, exhibits, and submissions.

V. CLASS NOTICE

The Court hereby APPROVES Class Notice substantially in the same form and with the same content as that attached as “Exhibit B,” finding that it fairly and adequately (i) describes the terms and effect of this Settlement Agreement, (ii) provides notice to the Settlement Class of the time and place of the Final Approval Hearing, and (iii) describes how the recipients of the Class Notice may object to the Settlement. The Court further finds that serving the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances, and fully satisfies the requirements of due process, the Federal Rules of Civil Procedure, and all other applicable law. The Court hereby also APPROVES the Claim Form substantially in the same form and with the same content as that attached as “Exhibit C.”

The Court appoints Strategic Claims Services as the Claims Administrator. The Court directs the Claims Administrator to mail the Notice Packet to Class Members in accordance with the terms of the Settlement Agreement. Further, the Parties are directed to establish a website for Class Members to view applicable documents and Court orders in accordance with the Settlement Agreement and as set forth in the Class Notice. Finally, pursuant to the terms of the Settlement Agreement, Defendants shall post a copy of the Class Notice in their Restaurants.

VI. REQUESTS FOR EXCLUSION

Members of the Class may exclude themselves from the Settlement by sending a letter by mail to the Claims Administrator, that is postmarked on or before the Bar Date, that states, “I request to be excluded from the settlement in *Walter v. Fort Washington PA 693, LLC and Friendly's Restaurant Norristown, PA (#897), LLC, et al.*, Case No. 2:17-cv-00178 (E.D. Pa.). I affirm that I was employed by Defendants as a Tipped Employee on one or more days between

January 12, 2014 and January 12, 2017.” To be considered valid, the Request for Exclusion must also include the individual’s full name, address, phone number, and authorized signature of the person who wishes to be excluded from the settlement.

Any member of the Settlement Class who submits a timely request for exclusion that complies with the requirement set forth in this Order shall not be bound by the Settlement, Settlement Agreement, or Final Order and Judgment, and will not be entitled to benefits or relief under the Settlement Agreement. Upon receipt, the Settlement Administrator shall promptly notify Class Counsel and Defendants’ Counsel according to the terms of the Settlement Agreement.

Any member of the Settlement Class who does not properly and timely mail a notice of exclusion as set forth herein shall be included in the Settlement Class and shall be bound by the terms of the Settlement, Settlement Agreement, and Final Order and Judgment, whether or not such member of the Settlement Class shall have otherwise objected to the settlement or sought exclusion, and whether or not such member submits a claim or participates in the settlement.

Any member of the Settlement Class who submits a notice of exclusion that complies with the requirements of this Order and also objects to the settlement shall be deemed to have excluded himself or herself from the Settlement Class and his or her objections shall not be considered by the Court.

VII. OBJECTIONS TO SETTLEMENT

Class Members may choose to object to the fairness, reasonableness or adequacy of the Settlement by submitting written objections to the Claims Administrator and to the Court. All objections to the Settlement must be sent no later than the Bar Date.

Objections, and any other papers submitted for the Court’s consideration in connection with issues to be addressed at the Final Approval Hearing shall be submitted to the Claims Administrator agreed to by the Parties. Objections must include: (a) the objector’s name, address, and telephone

number; (b) the name of this Action and the case number; (c) a statement of each objection; (d) sufficient written proof that the objector was an employee of Defendant during the Class Period; (e) a written brief detailing the specific basis for each objection and any evidence the objector wishes to introduce in support of the objection. The objector must include a signed sworn statement verifying under penalty of perjury that the objector believes in good faith that he or she is a member of the Settlement Class.

Upon receipt of any objection, the Claims Administrator shall follow the procedures set forth in the Settlement Agreement regarding notifying counsel for the Parties. Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

Any member of the Settlement Class who files and serves a timely, written objection pursuant to the terms of this Order may also appear at the Final Approval Hearing in person or through counsel retained at that individual's expense. Any member of the Settlement Class who wishes to appear at the Final Approval Hearing must file a Notice of Intent to Appear as described above in Section IV. Class Counsel and Defendants' Counsel should be prepared at the Final Approval Hearing to respond to any objections filed by Class Members, and shall file with the Court any responses to the objecting Settlement Class Members at least ten (10) days before the date of the Final Approval Hearing.

VIII. MOTION IN SUPPORT OF FINAL SETTLEMENT APPROVAL, APPLICATION FOR FEE, EXPENSES AND SERVICE PAYMENT

Plaintiff's Motion in Support of Final Approval of Settlement and related relief shall be filed with the Court and served on all counsel of record at least thirty (30) calendar days prior to the Final Approval Hearing, or no later than June 12, 2018. Further, any application by Class Counsel for attorneys' fees and reimbursement of litigation expenses and for a Service Payment for the Named

Plaintiff, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least thirty (30) calendar days prior to the Final Approval Hearing, or no later than June 12, 2018. Copies of such materials shall be available for inspection at the office of the Clerk of this Court and made available on the website identified in the Class Notice.

Until such time as the Court can make a final determination as to the propriety of the Settlement at the Final Approval Hearing, the Parties are hereby ordered to comply with the terms of the Settlement Agreement and this Order.

IX. STATUS OF LITIGATION AND SETTLEMENT

All discovery and other pretrial proceedings in this action are stayed and suspended, pending the Effective Date of the Class Settlement (“Final Approval”), except for such proceedings as are provided for in the Settlement Agreement, or which may be necessary to implement the terms of the Settlement Agreement, or this Order. Pending Final Approval, no Class Member, either directly, representatively, or in any other capacity (other than a Class Member who validly and timely elects to be excluded from the Class), shall commence, continue or prosecute against any or all Released Parties any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released upon Final Approval pursuant to the Settlement Agreement, and are hereby enjoined from so proceeding.

Upon Final Approval, all Class Members who do not file a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement Agreement, except for all claims arising under the Fair Labor Standards Act, and any such Settlement Class Member shall be deemed to have forever released the Released Persons from any and all such matters, claims and causes of action as provided for in the Settlement Agreement. Only Participating Settlement Class Members will be forever barred from asserting any of the Fair Labor Standards Act matters, claims, or causes of action that are released pursuant to the

Settlement Agreement. Participating Settlement Class Members Member shall be deemed to have forever released the Released Persons from any and all Fair Labor Standards Act matters, claims and causes of action as provided for in the Settlement Agreement.

In the event the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the status quo ante rights of Settlement Class Plaintiff or the Defendants.

Neither this Order nor the Settlement Agreement shall constitute any evidence or admission of liability by any Defendant, or an admission regarding the propriety of any certification of any particular class for purposes of litigation, nor shall they be offered into evidence in this or any other proceeding except to consummate or enforce the Settlement Agreement or the terms of this Order, or by any Released Party in connection with any action asserting Released Claims.

SO ORDERED this 23rd day of March, 2018

BY THE COURT:

/s/ Gerald Austin McHugh
United States District Judge