

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

AOUATIF AIT-HAMADI, *et al.*, individually
and on behalf of others similarly situated,

Plaintiffs.

v.

RISTORANTE LA PERLA OF
WASHINGTON, *et al.*

Defendants.

Civil Action No.: 2016 CA 002467b
Judge: Judge Neal E. Kravitz
Next Event: Status Conference
November 13, 2017

**PLAINTIFFS' CONSENT MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; DIRECTING THE ISSUANCE OF CLASS NOTICE;
AND SCHEDULING FINAL APPROVAL HEARING**

Plaintiffs Aouatif Ait-Hamadi, Otgonjargal Luvsandavaa, Azzedine Amrani-Idrissi, David Topp, and Dante Tapp, on behalf of themselves and the Class, (“Plaintiffs”), submits this Consent Motion for Preliminary Approval of Class Action Settlement, Approval of Proposed Class Notice, and Scheduling of a Final Approval Hearing. Defendants Ristorante la Perla of Washington, Ischia Inc. and Vittoria Testa (“Defendants”) consent to Plaintiff’s requested relief.

For the reasons set forth in the attached Statement of Points and Authorities, Plaintiffs respectfully request that the Court grant their Consent Motion, and enter the accompanying [Proposed] Order Granting Preliminary Approval of Class Action Settlement.

Dated: November 13, 2017

Respectfully submitted,

/s/Brendan J. Klaproth
Brendan J. Klaproth (D.C. Bar No. 999360)

Klaproth Law PLLC
406 5th Street NW
Suite 350
Washington, DC 20001
Tel: (202) 618-2344
Fax: (202) 618-4636
Email: bklaproth@klaprothlaw.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 13, 2017, I electronically served the foregoing via the PACER ECF/electronic filing system to counsel of record for all parties who have appeared.

/s/ Brendan J. Klaproth

Brendan J. Klaproth

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AND SCHEDULING FINAL APPROVAL HEARING**

Respectfully Submitted by:

Brendan J. Klapproth (D.C. Bar No. 999360)
Klapproth Law PLLC
406 5th Street NW, Suite 350
Washington, DC 20001
Tel: (202) 618-2344
Fax: (202) 618-4636
Email: bklapproth@klapprothlaw.com
Class Counsel

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I. INTRODUCTION

Plaintiffs Aouatif Ait-Hamadi, Otgonjargal Luvsandavaa, Azzedine Amrani-Idrissi, David Topp, and Dante Tapp, on behalf of themselves and all others similarly situated, hereby respectfully submit this Statement of Points and Authorities in support of their motion for preliminary approval of the proposed class action settlement set forth in the Settlement Agreement (“Settlement Agreement”) (attached as Exhibit 1). Defendants Ristorante La Perla of Washington (“La Perla”), Ischia Inc. (“Ischia”) and Vittoria Testa (collectively “Defendants”) consent to this Motion. Plaintiffs also requests that the Court enter an Order (the “Preliminary Approval Order”) that would:

- (1) grant preliminary approval of the proposed Settlement Agreement;
- (2) modify the class definition to all past and/or present employees of La Perla between April 1, 2013 through April 1, 2016.
- (3) approve the form and content of, and direct the distribution of the proposed notices, and accompanying forms, annexed hereto as Exhibits 2 and 3;
- (4) set a Final Approval Hearing for a date no earlier than ninety (90) days from the date the Court enters a Preliminary Approval Order.

As set forth below, the proposed Settlement Agreement is the product of arm’s length and intense negotiations. The underlying Settlement satisfies all of the prerequisites for preliminary approval. The proposed Settlement is a fair, reasonable, and adequate resolution of the litigation, which recognizes the risks each side faced, had the litigation continued. For these reasons, and those fully articulated below, Plaintiffs respectfully request that the Court preliminarily approve the Settlement and enter the proposed Preliminary Approval Order.

II. BACKGROUND

A. The Nature of the Lawsuit and Relevant Procedural History¹

On April 1, 2016, Plaintiffs initiated this lawsuit by filing a collective action complaint asserting claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*; the District of Columbia Minimum Wage Act Revision Act (“DCMWA”), D.C. Code § 32-1001 *et seq.*; District of Columbia Wage Payment and Collection Law (“DCWPCL”), D.C. Code § 32-1301, *et seq.*; the D.C. Employee Sick Leave Act (“Sick Leave Act”), D.C. Code § 32-131.01, *et seq.*; and the District of Columbia Human Rights Act, D.C. Code §§ 2-1401 *et seq.* (“D.C. Human Rights Act”). *See* Am. Compl. at ¶ 2. Plaintiffs brought their FLSA claims as a “collective actions,” and their DCWPCL, D.C. Employee Sick Leave Act, and D.C. Human Rights Act claims as a class action under Rule 23 of the D.C. Superior Court Rules of Civil Procedure. *Id.* Defendant Ischia operates Ristorante La Perla of Washington located at 2600 Pennsylvania Ave NW, #101, Washington, DC 20037. *Id.* at ¶¶ 12-14. The sole-shareholder of Ischia Inc. is Defendant Vittoria Testa. *Id.* at ¶¶ 12-14.

During their employment with Defendants, Plaintiffs were allegedly not paid overtime compensation despite routinely working over forty hours per week. *Id.* at ¶¶ 21-26. In addition to the unpaid overtime claim, Plaintiffs also alleged that Defendants violated the DCMWA by failing to Plaintiffs for all of the hours they worked (*Id.* at ¶¶ 27-35), and by sharing tips with

¹ For purposes of settlement, Defendants consent to the instant motion. Defendants do not, however, concede the version of the facts presented here, or the arguments advanced by Plaintiff in this instant motion. Defendants’ consent to the instant motion also does not represent an admission by Defendants of the allegations contained in Plaintiffs’ Amended Complaint or restated in this Motion. Indeed, Defendants reserve the right to take contrary factual and legal positions to those asserted by Plaintiff in this Motion, should the Court not approve the settlement.

management (*Id.* at ¶¶ 36-40). Further, Plaintiffs alleged that Defendants failed to pay the Class sick leave in violation of the Sick Leave Act. Finally, Plaintiffs alleged that Defendants subjected the Class to a sexually and racially hostile environment in violation of the D.C. Human Rights Act. *Id.* at ¶¶ 44-48.

On March 7, 2017, the Court certified the Class as “all past and present employees of La Perla.” The Court certified the following subclasses:

- a) Past and present employees of La Perla who were not paid all wages earned (including overtime wages) in violation of the DCWPCL;
- b) Past and present employees of La Perla who were not paid all wages earned (including overtime wages at least twice during each calendar month on regular paydays in violation of the DCWPCL;
- c) Past and present employees of La Perla who were not paid all wages earned (including overtime wages) within 7 days after resignation or termination in violation of the DCWPL;
- d) Past and present employees of La Perla who were not provided paid sick leave in violation of the Sick Leave Act; and,
- e) Past and present employees of La Perla who were subject to a hostile work environment in violation of the D.C. Human Rights Act.

See Order at 23 (March 7, 2017). On March 7, 2017, the Court also certified the FLSA Collective Action as “all non-exempt current and former individuals employed by Defendants who were not paid minimum wage and/or overtime wages in violation of the FLSA.” *Id.* at 25.

III. SUMMARY OF SETTLEMENT AGREEMENT

A. The Settlement Amount

The proposed Settlement requires the Defendants to pay into the Settlement Fund a total of \$460,000 (“Settlement Amount”). *See* Settlement Agreement at § 1.1 [attached hereto as Exhibit 1]. Subject to the Court’s approval, the following amounts will be paid from the Settlement Fund:

- (1) Settlement payments to Class Members who return claim forms (Settlement Agreement at §§ 1.3, 1.4);
- (2) The cost of settlement administration (*Id.* at § 2.6);²
- (3) Attorneys' fees totaling no more than \$153,333.33 (one-third of the Settlement Amount) plus reasonable costs incurred in connection with the litigation (*Id.* at §§ 2.4, 2.5); and,
- (4) Incentive award to each of the Plaintiffs in the amount of \$500 (*Id.* at § 2.3).

Each Class Member who returns a Claim Form (attached hereto as Exhibit 3), shall receive a proportional share of the funds remaining in the Settlement Fund after deducting Court-awarded attorneys' fees and litigation expenses, notice and claims administration costs, class representative incentive awards, and other Court-approved amounts. The total amount of the recovery for each individual Class Member will be determined by the number of Class Members that return the Claim Form. Nevertheless, it is anticipated that the Settlement will result in a recovery of thousands of dollars for each Class Member who submits a Claim Form.

B. Dismissal and Release of Claims

In exchange for the above consideration, members of the Class will be deemed to have completely released and discharged the Defendants from all claims assert in the Amended Complaint arising during the class period. *See* Settlement Agreement at § 3. This release shall not apply to any Class Member who opts out of the Class.

C. Proposed Schedule Following Preliminary Approval

Event	Timing
Deadline for Defendants to pay Settlement Amount to Settlement Fund	No more than fourteen (14) days of the Preliminary Approval Order.

² Plaintiffs' counsel received competitive bids from multiple, qualified settlement administrators.

Deadline for Mailing of Class Notice to members of the Class (the “Notice Date”)	No more than fourteen (14) days after the Preliminary Approval Order is entered, the Claims Administrator must mail to each member of the Class the Notice attached as Exhibit 2 and the Claim Form attached as Exhibit 3.
Deadline for Defendants’ Notice to Class Members Currently Employed by Defendants	No more than fourteen (14) days after entry of the Preliminary Approval Order, Defendants shall post a copy of the Notice in all work stations at Ristorante La Perla of Washington.
Deadline for Plaintiffs Counsel to create website	No more than fourteen (14) days after the preliminary approval order is entered.
Deadline for filing Objections and Requests to Opt Out of Settlement	Sixty (60) days after the Notice Date
Deadline to return Claim Form	Sixty (60) days after the Notice Date
Deadline for Plaintiffs to File Motion for Final Approval of Settlement, Motion for Attorney fees and Costs, and Approval of Incentive Award	Seventy-five (75) days after the Notice Date.
Final Fairness Approval Hearing	Not earlier than ninety (90) days after Preliminary Approval.
Deadline to Disburse Settlement Proceeds	Thirty (30) days of entry of the Final Approval Order

IV. ARGUMENT

A. The Settlement Should be Preliminary Approved by the Court

1. Standards and Procedures for Preliminary Approval

Plaintiff presents this Settlement to the Court for its review under D.C. Super. Ct. R. Civ. P. 23, which provides in pertinent part that the Court must approve any class action settlement following a hearing, directing notice in reasonable manner to class members and finding that the settlement is “fair, reasonable and adequate.” *See* D.C. Super. Ct. R. Civ. P. 23(e). In determining

whether the proposed settlement is “‘fair, reasonable, and adequate,’ a court must ‘eschew any rubber stamp approval,’ but also must ‘stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case.’” *Alvarez v. Keystone Plus Constr. Corp.*, 303 F.R.D. 152, 160 (D.D.C. 2014). “In addition, there is a long-standing judicial attitude favoring class action settlements, and the Court's discretion is constrained by the ‘principle of preference’ favoring and encouraging settlement in appropriate cases.” *Id.* (citing to *Cohen v. Warner Chilcott Pub. Ltd. Co.*, 522 F. Supp. 2d 105, 114 (D.D.C. 2007)).

In approving a settlement, courts are to consider several factors, including: “(a) whether the settlement is the result of arm's-length negotiations; (b) the terms of the settlement in relation to the strengths of plaintiffs' case; (c) the status of the litigation proceedings at the time of settlement; (d) the reaction of the class; and (e) the opinion of experienced counsel.” *Id.* at 159 (internal citations and quotations omitted). As set forth below, the Court should preliminarily approve the proposed Settlement because the Settlement is an excellent outcome that will provide each member of the Class with a significant recovery

2. The Proposed Settlement is Fair, Reasonable, and Adequate

First, the Settlement here was negotiated at arm's length which favors approval. “A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.” *In re APA Assessment Fee Litig.*, 311 F.R.D. 8, 19 (D.D.C. 2015) (citing to *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 55 (D.D.C. 2008)). As the Court is aware, the Parties' initiated settlement discussions shortly after Plaintiffs filed their Motion for Summary Judgment. *See* Defs.' Consent Motion to Stay Deadlines (August 8, 2017). Despite those initial efforts, the Parties were unable to reach an agreement. On September 15, 2017, Plaintiffs' refiled

their Motion for Summary Judgment. On September 29, 2017, Defendants opposed the Motion. Once the Parties' positions were fully briefed on the merits of the case, the Parties agreed to the Settlement Amount of \$460,000. The continued negotiation through summary judgment briefing demonstrates that the Settlement was reached through an arm's length negotiation.

Second, "[t]he Court must evaluate the relief provided in the proposed settlement against the relative strength of the plaintiffs' case, including their ability to obtain recovery at trial." *In re APA Assessment Fee Litig.*, 311 F.R.D. at 19. Here, if the case were to proceed, Defendants have indicated that they would aggressively defend the case at trial, and then appeal the decision on class certification and the outcome of the trial. Importantly, in mounting this defense, any insurance proceeds that are currently available would be exhausted. For this reason, even if Plaintiffs were able to achieve a recovery at trial on behalf of the Class that is greater than the Settlement Amount, it is extremely unlikely that Plaintiffs would be able to recover such a judgment against the Defendants. Regardless of the outcome of at trial, the Settlement Amount is likely the maximum recovery that the Class would be able to collect. But more importantly, the Settlement is an excellent outcome relative to the strength of Plaintiffs' case. Although the total amount of the recovery for each individual Class Member will be determined by the number of Class Members that return the Claim Form, the Settlement will undoubtedly result in a recovery of thousands of dollars for each Class Member who submits a Claim Form.

Third, settlement is appropriate at this stage of the litigation. "In evaluating this factor, courts generally 'consider whether counsel had sufficient information, through adequate discovery, to reasonably assess the risks of litigation vis-a-vis the probability of success and range of recovery.'" *Alvarez*, 303 F.R.D. at 164. The Parties have engaged in significant discovery. *See Klaproth Decl.* at 2-3 (stating that Plaintiffs' Counsel analyzed 1,546 pages of paystubs that were

produced by Defendants) [attached to Pls.' MSJ]. With the exception of Plaintiffs' reply, summary judgment has been briefed and the Parties have been fully apprised of the strengths and weaknesses of their cases. Given the extensive negotiations, exchange of discovery, and briefing on summary judgment, settlement comes "at a desirable point in the litigation for the parties to reach an agreement and to resolve these issues without further delay, expense, and litigation." *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100, 105 (D.D.C. 2004). The continued litigation of the case would increase the costs of litigation that is potentially adverse to the ability of the Class to recover against a potential judgment.

Fourth, because the Notice of the Settlement has not yet been distributed, the reaction of the Class Members cannot yet be evaluated. Plaintiffs will, however, present to the Court all comments and objections received by the Class Members in their Motion for Final Approval. Similarly, all Class Members who submit a proper objection will have an opportunity to comment on the Settlement Agreement at the Final Approval Hearing. Nevertheless, Plaintiffs do not anticipate a negative reaction to the Settlement from the Class because the Settlement does not grant undue preferential treatment to Plaintiffs. Moreover, in light of the unanimous approval by the five named Plaintiffs, it is anticipated that the Class will also approve of the Settlement.

"Finally, it is well established that the opinion of experienced counsel 'should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.'" *Alvarez*, 303 F.R.D. at 164. Class Counsel believes the settlement is fair and reasonable, and should be approved. At this stage of the litigation, neither Party would benefit from the prolonging of litigation. Certainly, the increased attorney's fees and costs associated with prolonged litigation diminishes the ability of Defendants to compensate the Class Members should the case proceed to trial.

B. The Proposed Class Notices Should Be Approved

When a class action lawsuit is settled, “[t]he court must direct to class members notice in a reasonable manner to all class members who would be bound by the proposal.” D.C. Super. Ct. R. Civ. P. 23(e)(1). Moreover:

For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; and (vi) the binding effect of a class judgment on members under Rule 23(c)(3).

D.C. Super. Ct. R. Civ. P. 23(c)(2)(B); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

Here, the notice process contemplated by the Agreement is reasonable and satisfies the requirements of Rule 23. Under the Settlement Agreement, within fourteen (14) days after the Preliminary Approval Date, the Claims Administrators shall send by first-class mail to each member of the Class notice of the members rights in the form prescribed by Exhibit 2 (the “Notice”). *See* Settlement Agreement at § 4. Importantly, before the Notice is sent, the Claims Administrator will perform a search for the 34 Class Members whose class notices initially sent by Class Counsel were returned as undeliverable. *Id.* at § 4.1. The Claims Administrator will also conduct searches for any Notices returned as undeliverable and re-mail to any newly discovered addresses. *Id.* This notice process easily fulfills the requirements of Rule 23 and the due process rights of absent Class Members. In fact, such individualized mailing has been recognized as the

best notice that can practicably be given to absent class members.³ *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974); *see also Grunin v. International House of Pancakes*, 513 F.2d 114, 121-22 (8th Cir. 1975).

In addition, the Notice Form, which is attached as Exhibit 2 clearly discloses important features of the settlement and the settlement process. In particular, the Notice Form provides Class Members with the following: (a) a description of the class; (b) a description of the litigation; (c) a description of the proposed settlement, including descriptions of each Class Member's individual monetary recovery and its calculation and of the scope of the release; (d) the identification of Class Counsel; (e) disclosure of Class Counsel's anticipated request for an award of attorneys' fees and costs; (f) an explanation of the right to be excluded from the settlement and the consequences of exclusion; (g) an explanation of the procedure and deadline for filing exclusion requests; (h) an explanation of the right to object to the settlement; (i) an explanation of the procedure and deadline for filing objections to the settlement; and (j) an announcement of the time and location of the final approval hearing. As such, the Notice Form satisfies the requirements of Rule 23(c)(2)(B).

C. The Class Definition Shall be Amended

Finally, under D.C. Super. Ct. R. Civ. P. 23(c)(1)(C), a court may amend the definition of the class at any time in the case. The Court certified the Class as "all past and present employees of La Perla." *See* Order at 23 (March 7, 2017). Plaintiffs respectfully move the Court to modify the definition of the Class to reflect the applicable statute of limitations period of three years under the DCWPCL, DCMWA, and Sick Leave Act. *See* D.C. Code §32-1308(c)(1).

³ In addition to the individualized mailing, Defendants will hand deliver a copy of the Notice to each member of the Class that is currently employed by Defendants as well as posting the Notice near the time-card machine at Ristorante La Perla of Washington.

Accordingly, Plaintiffs respectfully request the class definition be amended to the following: all past and/or present employees of La Perla between April 1, 2013 through April 1, 2016.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion in its entirety and enter the accompanying proposed Preliminary Approval Order.

Date: November 13, 2017

Respectfully submitted,

/s/Brendan J. Klaproth
Brendan J. Klaproth (D.C. Bar No. 999360)
Klaproth Law PLLC
406 5th Street NW, Suite 350
Washington, DC 20001
Tel: (202) 618-2344
Fax: (202) 618-4636
Email: bklaproth@klaprothlaw.com
Class Counsel