SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/03/18			DEPT. SS11
HONORABLE ANN I. JONES	JUDGE	M. FAUNE	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
C. CONCEPCION, C.A.	Deputy Sheriff	ROSIE SAMPLES, CSR#12383 **Reporter Pro Tempore**	Reporter

11:00 am	BC652905	Plaintiff Counsel	TIMOTHY E. CAMPEN X)
	JAY SOUTH VS CABO CANTINA LLC ET AL	Defendant Counsel	DAVID E. DWORSKY (X) MOE KESHAVARZI (X) ALEX TOMASEVIC (for objector, via CourtCall)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF JAY SOUTH, INDIVIDUALLY, AND ALL OTHERS SIMILARLY SITUATED FOR FINAL APPROVAL OF CLASS SETTLMENT;

The matter is called for hearing.

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date.

The Court rules as follows:

RULING:

Plaintiffs seek final approval of the settlement of their consumer class action. The tentative ruling is as follows:

(1) The Court overrules the objection submitted by Class Member, Scott Stern;
(2) The Court certifies the class for purposes of settlement;
(3) The Court finds that the settlement is fair, adequate, and reasonable;
(4) Class counsel, Slattery Sobel & DeCamp, LLP is awarded $125,000 as a combined attorneys' fees and costs award;
(5) Class representative, Jay South, is awarded an enhancement payment of $2,500 and
(6) Class Counsel is ordered to provide an

MINUTES ENTERED
08/03/18
COUNTY CLERK

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order consistent with this ruling and a separate judgment containing the class definition, release language, and the name of the Class Member who opted out of the Settlement by September 7, 2018.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT
California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. (See California Rules of Court, rule 3.769(h).) The class action may not be dismissed once judgment is entered. (See California Rules of Court, rule 3.770.) All class settlements are subject to a settlement hearing and court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. (Mallick v. Superior Court (1979) 89 Cal.App.3d 434, 438.) The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. (Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1801.)

Class Notice and Class Response

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		Defendant Counsel	DAVID E. DWORSKY (X) MOE KESHAVARZI (X) ALEX TOMASEVIC (for objector, via CourtCall)

NATURE OF PROCEEDINGS:

1. How was notice given? Heffler Claims Group is acting as claims administrator for this settlement. (Declaration of James R. Prutsman ¶1.) Notice was given to the class via email, media campaign, and posting in all of Defendant's restaurants. (Id. at ¶5; Declaration of Milton Zampelli ¶¶ 4-5.)

a. Email Notice: On February 21, 2018, Heffler received data from Defendant that contained 1,353 email addresses. Of the 1,353 email addresses, 111 were duplicative and removed from the data. Heffler identified a total of 1,242 unique records to receive emails. (Prutsman Decl. ¶6.) On February 28, 2018, Heffler emailed notice to the 1,242 email addresses on file for Class Members. Of the 1,242 emails sent, 37 emails bounced, and 15 people unsubscribed. (Id. at ¶11.)

b. Media Notice Campaign: The required media campaign commenced on March 8, 2018 and continued through May 3, 2018. Impressions were served via the San Diego Reader (circulation + 70,000), the LA Weekly (circulation +60,000) and The Orange County Weekly (circulation +45,000.) (Id. at ¶12.) Copies of the ads are attached to the Prutsman Declaration as Exhibit E.

c. Website Notice: In accordance with the Court's February 2, 2018 Order, Mr. Milton

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Zampelli, the owner of RMG Sunset, Inc. instructed his former general counsel, Amy Adolph, to ensure that the websites for each of Defendants' restaurants included a prominent notice regarding the Class Settlement that would provide visitors with a link to the Class Settlement website. (Declaration of Milton Zampelli ¶2.) A screen shot of the website for www.cabocantina.com, which shows the notice, is attached to the Zampelli Declaration as Exhibit A.

d. Posted Notice (in restaurants): On February 28, 2018 Ms. Adolph traveled to each of Defendants' restaurants and posted two signs in each restaurant notifying class members about the Class Settlement. Ms. Adolph also placed claim forms next to the notices in each restaurant. (Id. at ¶4.) Copies of photos of the restaurants, taken by Ms. Adolph, are attached to the Zampelli Declaration as Exhibit B. These pictures reflect the class notices and claim forms placed on and near the host stand at Baja Beach Cafe, and are consistent with the manner and location of the class notices and claim forms placed in a prominent location in each of Defendants' restaurants. (Ibid.) In addition, on March 7, 2018, Mr. Zampelli's business partner, Michael Bezerra, sent an email to all General Managers and Shift Leads at each of Defendants'

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restaurants, informing them that Ms. Adolph had posted the class notices and claim forms in each of the restaurants, and ensuring that they remained posted in a prominent location throughout the duration of the claims period. Mr. Bezerra also instructed the employees to ensure that there would always be adequate amounts of class notices and claim forms available at each location, and instructed that employees should encourage customers to review the information and visit the restaurants' website or the settlement website for more information. (Id. at ¶5.) A copy of Mr. Bezerra's email is attached to the Zampelli Declaration as Exhibit C.

2. How many opted-out? One. (Prutsman Decl. ¶14.)

3. How many objected? One (Class Member Scott Stern). (see discussion below)

4. How many submitted a claim form? A total of 9,324 claims were filed. Of these claims 9,271 were filed online 53 were paper claims received at the established PO Box. (Id. at ¶15.) A total of 7,238 claims were filed by claimants who entered an email address. (Id. at ¶16.) A total of 622 claims were filed online which used an email address more than 2

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times. This can be an indicator of duplicate or fraudulent claims. (Id. at ¶17.) A total of 2,060 claims were filed online using a mailing address more than one time. This can be an indicator of duplicate or fraudulent claims. (Id. at ¶18.) Excluding those claims which used an email address more than twice, excluding claims which used a physical address more than twice, and excluding the claims with indicia of fraud there remains a total 7,061 claims. (Id. at ¶19.)

5. Estimate of recovery to each class member? The claims administrator asserts that the claims submitted represent a total value of $20,693.43. (Ibid.) The average recovery per claimant is $2.93 [$20,693.43/7,061 claims = $2.93].

The Court finds that the notice was adequate and satisfies due process.

Evaluation of the Settlement

The Court must determine if the settlement is fair, adequate, and reasonable. The settlement is entitled to a presumption of fairness where: " (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act

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intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (Dunk v. Ford Motor Company (1996) 48 Cal.App.4th 1794, 1802 ("Dunk").) As Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 250, further notes:

> A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See Rebney v. Wells Fargo Bank, supra, 220 Cal. App. 3d at p. 1139 [settlements found to be fair and reasonable even though monetary relief provided was "relatively paltry"]; City of Detroit v. Grinnell Corp., supra, 495 F.2d at p. 455 [settlement amounted to only "a fraction of the potential recovery"].) Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc. (7th Cir. 1972) 455 F.2d 101, 109.)

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The Court finds that the settlement is fair, adequate, and reasonable based on the following:

1. Settlement was reached through arms'-length negotiations? Yes. Initial settlement talks with opposing counsel revealed the original Complaint Included incorrect names for some of the Defendant entities. (Campen Decl. ISO Preliminary Approval, ¶5.) Correcting the errors in party names was the primary basis for originally seeking to file an amended complaint. (Ibid.) At the conclusion of mediation on June 2, 2017, the parties had reached a settlement in principle, subject to further proof. Specifically, Defendant RMG Sunset, Inc. demanded that all fourteen restaurant LLCs under the RMG Sunset management umbrella also be included in the settlement to promote finality of challenges to surcharge issue and for judicial economy. (Id. at ¶6.) Class Counsel demanded an opportunity to review the discovery from the added locations before confirming the terms reached in the settlement in principle. (Id. at ¶7.) Defendants provided the requested data, and Class Counsel confirmed it was consistent with the previous data and in line with the proposed settlement. (Id. at ¶8.) The initial settlement agreement was finally

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executed on June 16, 2017 with all the Sunset RMG restaurant entities included. (Ibid.) The First Amended Complaint was further modified to include all fourteen entities, as well as add several additional causes of action relevant to the matter. (Ibid.) In sum, there was no final settlement until ten days after mediation and not until after all relevant discovery was reviewed and vetted by Class Counsel. (Ibid.) (P Supp. Brief at 4:8-5:15.)

2. Investigation and discovery were sufficient to allow counsel and the court to act intelligently? Yes. Subsequent to filing the original Complaint in this matter, the parties engaged in informal discovery. In May of 2017, Defendants' provided Plaintiff with 340 pages of discovery, which included all discovery Defendants had produced in the related Stern case in San Diego. This discovery included a monthly accounting of all surcharges collected from all of Defendants' restaurants from January 2016 through May 2017, as well as the total number of transactions per month for each individual restaurant during that same time period. (Id. at ¶4). Discovery provided to Plaintiff also included email correspondence between Defendants and customers regarding the surcharge, copies of notices of the surcharge

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provided in the restaurants, and internal communications between corporate personnel, restaurant managers, and restaurant staff regarding administration of the surcharge. (Id. at ¶5).

3. Counsel is experienced in similar litigation? Yes. (Declaration of Timothy Campen ISO Final Approval ¶¶ 4-5.)

4. The percentage of objectors is small. One Class Member objected.

As noted in Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 408:

> ...a trial court's approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (Kullar, supra, 168 Cal.App.4th at p. 130.) In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and

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weaknesses of the claims and the risks of the particular litigation." (Id. at p. 129.)

Economic Value:

Plaintiff's First Amended Complaint alleges five causes of action, all of which center around the same act of Defendants' particular means of including a "living wage surcharge" on every transaction. The total amount of money collected from surcharges by all Defendant restaurants was approximately $2,102,754. (Campen Decl. ISO Preliminary Approval ¶3.) The maximum limit of economic value of this settlement can be based on the total amount of surcharges collected. Alternatively, assuming each of the 2,064,598 transactions resulted in a claim for a $3.00 refund, the upper limit of the value could theoretically be as high as $6,193,794. (P Supp. Brief ISO Preliminary Approval at 2:17-25.)

As a practical matter, it may be difficult or impossible to know the true number of patrons who were honestly unaware of the surcharge and accordingly seek reimbursement. Thus, the claims made rate among bona fide class members could very well result in a value less than that maximum. (Id. at 3:1-4.)

Defendants do not believe that Plaintiff's claims

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have any value, especially in light of the obstacles Plaintiff faces in attempting to certify a class. However, Defendants have agreed to enter into this settlement to achieve finality and avoid continuing costs of litigation. (Defendant's Further Supp. Brief ISO Preliminary Approval at 2:16-21.)

Value of Injunction:

The operative Settlement Agreement in this case includes injunctive relief prohibiting Defendant restaurants from applying any surcharge to any transaction for 5 years. Considering the actual living wage surcharges invoked in the current case spanned less than 17 months and totaled over $2 million, the value of this injunctive relief could be considered to have substantial economic value to future patrons of Defendant's restaurants. (P Supp. Brief ISO Preliminary Approval at 3:15-23.)

Just as importantly, the broad language of prohibiting any surcharge would protect future patrons of Defendant restaurants from being subjected to similar attempts to collect additional revenue without raising the posted prices of menu items. (Ibid.)

The moving papers, declarations and exhibits attached thereto, have provided this Court with "basic information about the nature and magnitude of

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the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise" such that this Court is satisfied "that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (See Dunk, supra at p. 1802 ["So long as the record is adequate to reach 'an intelligent and objective opinion of the probabilities of success should the claim be litigated' and 'form' an educated estimate of the complexity, expense and likely duration of such litigation...it is sufficient."].)

Costs and Fees

1. How much is requested for fees?
The lodestar is the primary method of establishing the amount of reasonable attorney fees in California. (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 556.) In common fund cases, courts may award fees pursuant to the percentage method, as cross-checked against the lodestar. (Laffitte v. Robert Half Intern., Inc. (2016) 1 Cal.5th 480, 503.)

Here, Class Counsel is requesting $125,000 pursuant to the lodestar method. Class Counsel argues that the requested fee is

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VS
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Plaintiff Counsel: TIMOTHY E. CAMPEN X)

Defendant Counsel: DAVID E. DWORSKY (X)
MOE KESHAVARZI (X)

ALEX TOMASEVIC (for objector, via CourtCall)

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justified because this litigation resulted in a substantial benefit to the Class and a benefit to consumers who are the new beneficiaries of the injunction that amends Defendants' business practices as it relates to the use of any surcharge whatsoever. (Motion ISO Fees at 3:19-22.)

Class Counsel has presented evidence summarized below, from which the lodestar may be calculated.

Attorney/Support Staff	Hours	Rate	Totals
Camille DeCamp	158.4	$525	$83,160.00
Timothy Campen	248.1	$395	$97,999.50
Mitchel Malachowski	6.5	$395	$2,567.50
Angelia Gazzola (Paralegal)	10.8	$185	$1,998.00
Totals	423.8		$185,725.00

(Campen Decl. ISO Final Approval, ¶30.)

Class Counsel has also provided detailed billing records (attached to the Lodgment ISO Fees as Exhibit E). The hourly rates and hours billed both appear to be reasonable. In total, the attorneys and staff of Slattery Sobel & DeCamp have devoted 423.8 hours to this case,

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for a total lodestar of $185,725. Counsel's actual fee request of $125,000 requires application of a .67 lodestar multiplier.

Class Counsel further asserts that the fee is justified by the contingent nature of Class Counsel's representation, and the great barriers to achieving success on the merits posed by procedural issues unique to class action litigation. (Motion ISO Fees at 6:23-25.) Counsel argues that the use of surcharges by restaurants to offset rising operational costs, such as increases in minimum wage, is unregulated specifically by law and is not well defined in the area in consumer protection. There are no specific laws dictating how notice should be given to patrons to best ensure they will be aware of the additional fee prior to ordering. Defendants' have consistently argued at least some patrons were certainly aware of the surcharge, and they would have vigorously opposed class certification on this basis had litigation continued. Class Counsel was able to avoid the risk of the class receiving no compensation whatsoever, and California consumers enjoying no protection from further deceptive surcharges in the future. Having achieved such a result, Class Counsel argues that it should be rewarded for its efforts.

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(Id. at 7:5-13.)

The Court finds that Class Counsel assumed a risk by taking on this case and that a benefit has been conferred on the Class as a result of Class Counsel's efforts. Furthermore, the fee request is well supported by the lodestar. Accordingly, the Court awards attorneys' fees in the requested amount of $125,000.

2. What are the costs claimed?
Class Counsel has incurred $6,980.62 in costs of litigation relating to this case. (Campen Decl. ISO Final Approval ¶25.) Costs include filing and service fees ($2,864.30), mediation ($3,325.00), and court reporter fees ($312.00). These costs all appear to be reasonable and necessary to the litigation.

Class Counsel's requested fee award (discussed above) is inclusive of costs. (Campen Decl. ISO Final Approval ¶30.) Accordingly, the Court awards no additional amount for costs of litigation.

3. Incentive payment to class representative?
An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by

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the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807; Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395 ["'[C]riteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]',"] [citing Van Vranken v. Atlantic Richfield Co. (N.D.Cal. 1995) 901 F.Supp. 294, 299.].)

Plaintiff, Jay South, requests an enhancement award of $2,500. (Motion ISO Fees at 1:11) He has filed a declaration (attached to the Lodgment ISO Fees as Exhibit D) describing his personal contribution to this litigation.

Mr. South states that his contributions to this litigation were as follows: working

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with Class Counsel to evaluate whether there was sufficient notice or disclosure of Defendants' contested surcharge, meeting with Class Counsel, both telephonically and in person, on "many, many occasions," participating in the mediation process by discussing it with Counsel when a settlement was being proposed, reviewing many documents in this case, including the Complaint, the First Amended Complaint, the informal discovery proved by Defendants, the mediation brief, various other court-filed documents, and many electronic communications from my Counsel. (Declaration of Jay South ¶4.) Mr. South also reviewed this Declaration as well as generally reviewed the supporting motion relating to the request for an award of attorneys' fees. (Ibid.)

The Court finds that a Class Representative award of $2,500 is reasonable under these circumstances.

4. Claims Administration Costs?
The Claims Administrator, Heffler Claims Group, did not provide a total cost for administering the settlement. Defendant has agreed to pay the costs of administration, which, at preliminary approval, were estimated at $65,000. (Settlement Agreement ¶4.9.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/03/18			DEPT. SS11
HONORABLE ANN I. JONES	JUDGE	M. FAUNE	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
C. CONCEPCION, C.A.	Deputy Sheriff	ROSIE SAMPLES, CSR#12383 **Reporter Pro Tempore**	Reporter

11:00 am	BC652905	Plaintiff Counsel	TIMOTHY E. CAMPEN X)
	JAY SOUTH VS CABO CANTINA LLC ET AL	Defendant Counsel	DAVID E. DWORSKY (X) MOE KESHAVARZI (X) ALEX TOMASEVIC (for objector, via CourtCall)

NATURE OF PROCEEDINGS:

OBJECTION TO THE SETTLEMENT

On April 30, 2018, Class Member Scott Stern, who is represented by Nicholas & Tomasevic, LLP and Clinton Rooney, filed an objection to the instant settlement. Mr. Stern asserts that the Court should not approve this settlement for the following reasons: (1) the settlement is a reverse auction; and (2) the proposed settlement is inadequate in that the amount to be paid to class members is much lower than what objector contends they are owed; the settlement is claims-made with full reversion; and the timing of the objection period is designed to be unfair.

In his Opposition to the Motion for Fees, Costs, and Enhancement Award, Mr. Stern further asserts that Class Counsel's fee request of $125,000, and Plaintiff's enhancement award of $2,500 are, when combined, over six times the amount recovered for California Class Members. (Opposition at 2:9-28.)

In their response to the Stern objection, Defendants point out that Mr. Stern raised identical arguments in his Motion to Intervene filed prior to preliminary approval of the instant settlement. The Court denied this motion finding that "the interests of class members are well protected by the negotiated settlement agreement." (November 28, 2017

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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NATURE OF PROCEEDINGS:

Order Denying Motion to Intervene (the "Order"), p.6, attached as Exhibit 1 to the Declaration of David Dworsky (the "Dworsky Decl.")). (Defendant's Response at 3:2-8.)

Defendant further notes that Mr. Stern cites no authority and provides no argument as to why the negotiated payments to Class Counsel and the Class Representative are unfair. Furthermore, as shown in Plaintiff's Motion for Award of Attorneys' Fees, Class Counsel incurred costs and fees far exceeding the negotiated $125,000 payment. (Id. at 3:20-25.)

Plaintiff Jay South's Response to Class Member Scott Stern's Opposition reiterates Defendant's arguments, which are summarized above.

The Court notes that Objector has raised no argument that was not already raised in the motion to intervene. These arguments were insufficient to prevent intervention, and they are insufficient to deny approval of this settlement.

Accordingly, the objection of Class Member Scott Stern is overruled.

Final Report:

The Court orders class counsel to file a final report summarizing all distributions made pursuant

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C. CONCEPCION, C.A.	Deputy Sheriff	ROSIE SAMPLES, CSR#12383 **Reporter Pro Tempore**	Reporter

11:00 am	BC652905	Plaintiff Counsel	TIMOTHY E. CAMPEN X)
	JAY SOUTH VS CABO CANTINA LLC ET AL	Defendant Counsel	DAVID E. DWORSKY (X) MOE KESHAVARZI (X) ALEX TOMASEVIC (for objector, via CourtCall)

NATURE OF PROCEEDINGS:

to the approved settlement, supported by declaration.

The Court sets a non-appearance date for submission of a final report for December 3, 2018.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the MINUTE ORDER- COURT'S RULING ON MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 8/03/18

Sherri R. Carter, Executive Officer/Clerk

MINUTES ENTERED
08/03/18
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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NATURE OF PROCEEDINGS:

By: _____ M. Faune

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MINUTES ENTERED
08/03/18
COUNTY CLERK