

NOV 10 2016

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Class Counsel

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Central Civil West

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OCT 18 2016

BRIAN BEHAEIN, BERSAYNA
CLEMENTE, RAQUEL CRUZ, and BORIS
GNEZDILOV, individually and on behalf of all
other similarly situated current and former
employees of Pizza Hut, Inc., dba Pizza Hut,

Plaintiffs,

v.

PIZZA HUT, INC., dba Pizza Hut, a California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. BC384563 By: I. Arellanes

Assigned to: Hon. Amy Hogue
Department: 307

CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

Complaint Filed: January 29, 2008

1 On November 10, 2016, a hearing was held before this Court on the unopposed motion of
2 Plaintiffs Brian Behaein, *et al.*, for final approval of the Class Action Settlement, as amended by the
3 Joint Stipulation to Amend Settlement Agreement (hereafter “Settlement”), which this Court
4 preliminarily approved on July 21, 2016 (“Preliminary Approval Order”). All parties appeared by
5 their counsel of record.

6 Having received and considered the Settlement and supporting papers received by the Court
7 in connection with the motions for preliminary approval and final approval of the settlement, and
8 having received and considered argument at the final approval hearing on November 10, 2016, by
9 means of this order (the “Final Approval Order”), the Court grants final approval to the Settlement,
10 and hereby FINDS AND ORDERS as follows:

11 1. Except as otherwise specified herein, the Court for purposes of this Final Approval
12 Order adopts all defined terms set forth in the Settlement.

13 2. This Court has jurisdiction over the subject matter of this action and the parties,
14 including all Class Members.

15 3. Pursuant to the Preliminary Approval Order, the Settlement Administrator sent a
16 Notice of Proposed Class Action Settlement and Final Settlement Approval (“Notice”) to 18,521
17 Class Members by first-class mail. The vast majority of the notices mailed were not returned as
18 undeliverable, and of those notices that were returned as undeliverable, 533 were remailed after
19 obtaining updated addresses. The Notice informed Class Members of the terms of the Settlement,
20 their right to object to the Settlement or to elect not to participate in the Settlement, and their right to
21 appear in person or through counsel at the final approval hearing and be heard regarding approval of
22 the Settlement. Adequate periods of time were provided for these procedures.

23 4. The Court finds and determines that the Notice and the procedure for its distribution
24 afforded adequate protections to Class Members and provide the basis for the Court to make an
25 informed decision regarding approval of the Settlement based on the responses of Class Members.
26 Notice was accomplished in all material respects in the manner prescribed by the Settlement. The
27 Court finds and determines that the notice provided in this case was the best notice practicable under
28 the circumstances, and satisfies the requirements of the California Rules of Court and due process.

1 5. For the reasons stated in the Preliminary Approval Order and the Court’s July 17,
2 2015 Order granting class certification of the Driver Subclass’s vehicle expense reimbursement
3 claim, the Court finds and determines that the Class and the Driver Subclass meet all of the legal
4 requirements for class certification. It is hereby ordered that the Class and the Driver Subclass are
5 finally certified for purposes of settlement of this action.

6 6. This Court also confirms that the Fair Labor Standards Act (“FLSA”) claim asserted
7 on behalf of the Driver Subclass meets all of the legal requirements for certification as a collective
8 action under §16(b) of the FLSA, 29 U.S.C. §216(b).

9 7. The Class is defined as follows:

10 All persons employed in a Pizza Hut¹ restaurant in the State of California at any time
11 since May 26, 2006 through December 13, 2010 as drivers, production employees (or
12 “cooks”), customer service representatives, hosts/servers, and any other non-exempt,
13 non-managerial hourly restaurant position.

14 8. The Driver Subclass is defined as follows:

15 All persons employed in a Pizza Hut restaurant in the State of California at any time
16 since June 6, 2006 through December 13, 2010 as drivers.

17 9. The Class does not include any employee of Pizza Hut Inc. for any time that the
18 employee was employed by a restaurant in California owned or operated by a Pizza Hut franchisee.
19 Settlement ¶V.1.5. The Class does not include any person who has previously released the Released
20 Claims under the Settlement. Settlement ¶V.1.8.

21 10. The Court confirms as final the appointment of named plaintiffs Brian Behaein, Boris
22 Gnezdilov, Raquel Cruz, and Bersayna Clemente, as Class Representatives of the Class, and of Brian
23 Behaein and Boris Gnezdilov as Class and Collective Action Representatives of the Driver Subclass.

24 11. The Court confirms as final the appointment of Rastegar & Matern, Altshuler Berzon
25 LLP, and Righetti Glugoski as Class Counsel.

26 12. The Court confirms as final the appointment of KCC LLC as the Settlement
27 Administrator, to perform all duties of the Settlement Administrator as specified in the Settlement.

28 ¹ According to Defendant, on May 20, 2016, Pizza Hut, Inc. merged with Pizza Hut, LLC, and
ceased to be an existing entity. Pizza Hut, LLC, however, assumed all of Pizza Hut, Inc.’s rights and
obligations, including the rights and obligations under the Settlement. The Court continues to refer
to defendant as “Pizza Hut, Inc.”

1 13. The Court finds that the settlement of this action, on the terms and conditions set forth
2 in the Settlement, is in all respects fair, reasonable, adequate, and in the best interests of the
3 Settlement Class Members, especially in light of the benefits provided to Settlement Class Members,
4 the strength of Plaintiffs' claims, the complexity, expense and probable duration of further litigation,
5 and the risk and delay inherent in possible appeals. The Court further finds that the Settlement is the
6 result of arms-length negotiation between experienced counsel representing the interests of the Class
7 and Defendant respectively, following thorough and adequate factual and legal investigation.

8 14. The response of Class Members to the Settlement further supports Settlement
9 approval. As a part of the notice process, only one Class Member, Moises Razo of Riverside,
10 California, timely requested exclusion from the Settlement. Another Class Member, Israel Santiago,
11 called Class Counsel and inquired about exclusion from the Settlement, but failed to do so before the
12 deadline stated in the Notice for opting out. No Class Member has submitted a written objection.
13 One Class Member submitted a timely notice to appear and be heard at the final approval hearing,
14 but did not appear at the hearing in person or through counsel. The Court has reviewed the Class
15 Member's written notice to appear, and finds that the Class Member was not expressing any
16 objection to or dissatisfaction with the Settlement.

17 15. The Court finds that Legal Services for Children is a child advocacy program within
18 the meaning of Code of Civil Procedure §384. The Court therefore approves Legal Services for
19 Children as the *cy pres* beneficiary under the Settlement.

20 16. The Settlement, which has been filed with the Court and shall be deemed
21 incorporated herein, is finally approved and shall be implemented in accordance with its terms. The
22 Court directs the Settlement Administrator to disburse to those persons and entities referenced
23 below, in the manner set forth, the following amounts:

- 24 (a) To each Settlement Class Member, by check, his/her Settlement Payment as
25 calculated by the Settlement Administrator, within 30 calendar days of the
26 Effective Date as defined in paragraph V.8.4 of the Settlement; and by second
27 check, any additional amount determined to be owing to that Settlement Class
28

1 Member pursuant to paragraphs V.8.8-V.8.10 of the Settlement, on the
2 timelines set forth therein;

3 (b) To each Class Representative, the sum of \$12,000.00, by check, within 15
4 calendar days of the Effective Date, Settlement ¶V.8.17 in addition to any
5 Settlement Payment to which each of them is entitled, and which shall be
6 distributed to them in accordance with subparagraph (a);

7 (c) To the State of California Labor & Workforce Development Agency, the sum
8 of \$15,000.00, by check, within 30 calendar days of the Effective Date
9 (Settlement ¶V.8.15); *representing 75% of PAGA penalty of \$20,000. 75,000 of PAGA*

10 (d) To Altshuler Berzon LLP, Rastegar & Matern, and John Glugoski, jointly, by
11 wire transfer, the total amount of *\$1,982,000.00* ~~\$2,000,000.00~~ (or one-third of the Gross
12 Settlement Fund), for their attorneys' fees, and \$429,810.16 for their litigation
13 expenses, within 15 calendar days of the Effective Date (Settlement ¶V.8.16);

14 (e) To KCC LLC, the total amount of \$130,000.00 for settlement administration
15 costs; and

16 (f) To Legal Services for Children, by check, as *cypres* beneficiary, if
17 appropriate in accordance with paragraph V.8.11 of the Settlement.

18 17. The Notice informed each Class Member that they would be mailed Settlement
19 Payment checks only if the Notice mailed to him or her was not returned as undeliverable and no
20 updated address could be located. The Notice further informed Class Members that funds from
21 Settlement Payment checks that were not cashed will be redistributed. The Settlement Payment
22 checks sent to Settlement Class Members do not entitle the Class Member to the proceeds of the
23 check. The Settlement Class Member must negotiate the check issued to him or her within the stale
24 date period set forth in paragraph V.8.15 of the Settlement to perfect his or her right to receive
25 payment from the Net Settlement Fund. Checks which are not negotiated by the stale date or
26 regarding which there has not been a reissue request made by the stale date will become void. The
27 recipient's interest in a payment from the Net Settlement Fund will upon the stale date be
28 extinguished. The funds resulting from the voided checks and any related tax payments will become

1 a part of the corpus of the Net Settlement Fund and will be subject to redistribution or tender to the
2 *cy pres* recipient, as directed in paragraphs V.8.7-V.8.11 of the Settlement.

3 18. By operation of the entry of this Final Approval Order and pursuant to the Settlement,
4 as of the Effective Date of the Settlement, all of the Released Claims of each Settlement Class
5 Member, as well as the Class Representatives' Released Claims, are and shall be deemed to be
6 conclusively released as against the PHI Released parties, as defined in the Settlement.

7 19. This Order and the Judgment are binding on all Settlement Class members, except
8 Moises Razo of Riverside, California, referenced above in paragraph 14, who timely excluded
9 himself from the Class.

10 20. This Final Approval Order and the Judgment shall be posted on the case website
11 maintained by the Settlement Administrator within 7 days after the entry of this Order, and shall
12 remain posted there for at least 180 days after the date of Final Approval.

13 21. Pending further order of this Court, all proceedings in this matter except those
14 contemplated herein and the Settlement Agreement are stayed and all Court dates are vacated. For
15 purposes of Code of Civil Procedure §583.340, the time within which this action must be brought to
16 trial is deemed suspended.

17 22. Without affecting the finality of the Court's judgment in any way, the Court retains
18 jurisdiction over this matter for purposes of resolving issues relating to interpretation, administration,
19 implementation, effectuation, and enforcement of the Settlement.

20 23. The Settlement Administrator is directed to file a declaration regarding the final
21 distribution of the settlement funds by SEPT. 7, 2017. **OSC RE COMPLIANCE**
22 **SET FOR SEPT. 14, 2017, AT 9:00 A.M. IN**
23 **DEPT. 307.**

24 IT IS SO ORDERED.

25 Dated: NOV. 10, 2016

ELIHU M. BERLE

Judge of the Superior Court