

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MONIKA VIDER, On Behalf of Herself</b>	<b>:</b>	<b>CIVIL ACTION</b>
<b>And All Others Similarly Situated</b>	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>LMT REAL ESTATE, LLC, d/b/a Panache</b>	<b>:</b>	
<b>Wood Fire Grill and CHASE "HABIB"</b>	<b>:</b>	
<b>TROUDI</b>	<b>:</b>	<b>NO. 19-2066</b>

**ORDER**

**NOW**, this 25th day of September, 2020, upon consideration of the Plaintiff's Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement, Certification of Settlement Class, Appointment of Class Counsel, Approval of Proposed Class and Collective Notice, and Scheduling of a Final Approval Hearing (Document No. 37) and after a hearing, it is **ORDERED** that the motion is **GRANTED**.

**IT IS FURTHER ORDERED** as follows:

1. The Joint Stipulation of Settlement and Release Agreement ("Settlement Agreement") (Document No. 38-1) entered into between the plaintiff Monika Vider, on behalf of herself and all other individuals similarly situated, and defendants LMT Real Estate d/b/a Panache Wood Fire Grill ("Panache"), Chase "Habib" Troudi ("Troudi") and Ristorante Castello, Inc. d/b/a Ristorante Castello ("Castello") is preliminarily approved.
2. The terms and conditions of the Settlement Agreement are incorporated in this Order.
3. The following Settlement Class is preliminarily certified for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), as follows:

All current and former bartenders, servers, bussers, and food runners ("Tipped Employees") who, at any time between May

13, 2016 and October 24, 2019: (1) were employed by Panache and Troudi (“Defendants”) in Pennsylvania; (2) worked one or more hours at Panache; (3) were not paid the full minimum wage by Defendants based on a “tip credit” claimed by Defendants; and (4) do not timely request exclusion from the Class (“PA Class”).

4. The following FLSA Collective Action is conditionally certified for settlement purposes only, pursuant to 29 U.S.C. § 216(b), as follows:

All current and former bartenders, servers, bussers, and food runners (“Tipped Employees”) who, at any time between May 13, 2016 and October 24, 2019: (1) were employed by Panache and Troudi (“Defendants”) in Pennsylvania; (2) worked one or more hours at Panache; (3) were not paid the full minimum wage by Defendants based on a “tip credit” claimed by Defendants; and (4) opt in to become “Participating Settlement Class Members” by submitting a valid claim form (“FLSA Class”).

5. In the Amended Complaint, the Plaintiff, who was employed as a bartender by Panache, asserted claims against the defendants for violations of the minimum wage requirements of the Fair Labor Standards Act of 1938, as amended 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.101, *et seq.* She also asserted a common law claim of unjust enrichment. Specifically, the Plaintiff alleged that the defendants systematically and willfully denied their Tipped Employees certain wages due and owing when they unlawfully took “tip credits”<sup>1</sup> by failing to ensure that the employees earned enough in tips to cover the tip credit and failing to provide adequate notice to the employees required for taking the tip credit.

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<sup>1</sup> A “tip credit” is where an employer pays its tipped employees less than minimum wage provided the employee’s tips received from customers plus the tip credit paid by the employer equals at least the applicable minimum wage.

6. The Settlement Agreement resolves these claims as follows:
  - a. The Defendants will pay the Settlement Amount of \$250,000.00.
  - b. The Net Settlement Amount, which is the Settlement Amount less any notice and administration costs, court-approved attorneys' fees and litigation expenses and service payment to the plaintiff, Monika Vider will be distributed to FLSA Class Members (also referred to as "Participating Settlement Class Members") entitled to a distribution of the proceeds from the Settlement in accordance with the Settlement Payment in the Settlement Agreement.
  - c. PA Class Members will release all Pennsylvania wage-related claims against the Defendants for the period May 13, 2016 through October 24, 2019.
  - d. FLSA Class Members (or Participating Settlement Class Members) will release all FLSA and Pennsylvania wage-related claims against the Defendants for the period May 13, 2016 through October 24, 2019.
  - e. Defendant Castello shall be dismissed from the action.
7. If the settlement is not finally approved, the Defendants' stipulation to certification of the PA Class and FLSA Class shall be null and void *ab initio*, and may not be used or relied upon by the Plaintiff or any member of the PA or FLSA classes for any purpose, nor may the findings set forth in this Order for purposes of certification of the two classes be used in connection with contested class certification proceedings or for any other purpose.
8. The Settlement Agreement is likely to be approved as fair, reasonable and adequate to the two Settlement Classes after a final approval hearing.

9. The prerequisites to a class action under Fed. R. Civ. P. 23(a) have been satisfied for settlement purposes in that:

- a. there are approximately 130 members of the PA Class;
- b. there are questions of fact and law that are common to all members of the PA Class;
- c. the claims of the class representative are typical of those of the other members of the PA Class;
- d. the class representative will fairly and adequately protect the interests of the PA Class; and
- e. counsel for the PA Class, experienced in complex commercial and class action litigation, have and will continue to adequately represent the PA Class.

10. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(3) for settlement purposes because:

- a. a class action is superior to other available methods for the fair and efficient adjudication of this controversy; and
- b. questions of fact and law common to members of the PA Class predominate over any questions affecting only individual members.

11. The prerequisites to conditionally certify the FLSA Collective Action have been satisfied for settlement purposes because the Plaintiff has made the requisite “modest factual showing” that the putative class members are “similarly situated” to her.

12. Plaintiff Monika Vider is appointed as the Class Representative.

13. Gerald D. Wells, III and Robert J. Gray of Connolly Wells & Gray, LLP and Gary F. Lynch and Edward W. Ciolko of Carlson Lynch LLP are appointed as counsel for the two Settlement Classes ("Class Counsel").

14. RG/2 Claims Administration LLC is appointed as the Claims Administrator.

15. No later than **October 5, 2020**, the Defendants shall provide the Claims Administrator with contact and wage information about each Class member in accordance with paragraph 4.6 of the Settlement Agreement.

16. No later than **October 19, 2020**, the Claims Administrator shall provide notice to the PA Class Members in accordance with paragraph 4.8 of the Settlement Agreement by mailing the Notice Packet via first class mail to each Class Member and emailing a pdf copy of the Class Notice. The Notice Packet shall include the Class Notice, estimated settlement payment amounts to the Class Members and the claim form. The Class Notice, which shall be substantially in the form attached as Exhibit A to the Plaintiff's Unopposed Notice of Revised Class Notice (Document No. 41-1), shall provide, *inter alia*, the terms and operations of the Settlement, the nature and extent of the release of claims, the maximum attorneys' fees and Service Payment for Plaintiff, the procedure and timing for objecting to the Settlement, the form and method by which a Class Member may exclude themselves from the Settlement, the date and place for the Final Approval Hearing, and an explanation that only individuals submitting a timely Claim Form to the Claims Administrator will receive any money under this Settlement. The Claims Administrator will also establish a settlement website, which will include the Class Notice, along with other documents related to the Settlement.

17. The Defendants will post a copy of the Preliminary Approval Order and the court-approved Class Notice in its Panache Restaurant at the same location it posts its wage and hour posters.

18. No later than **November 23, 2020**, the Claims Administrator shall file proof of mailing of the Class Notice required by paragraph 16 of this Order.

19. The manner of giving notice as prescribed in this Order satisfies the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled to notice.

20. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement and for an award of attorneys' fees and expenses by Class Counsel shall be filed no later than **November 23, 2020**.

21. No later than **December 3, 2020**, PA Class Members who wish to opt in to the FLSA collective action and become a Participating Settlement Class Member and be eligible to receive a distribution from the Net Settlement Fund must submit a valid and timely Claim Form in accordance with the terms of the Settlement Agreement.

22. Each PA Class Member shall have the right not to be included in the PA Class by mailing a request for exclusion to the Claims Administrator postmarked no later than **December 3, 2020**. Any PA Class Member who wishes to exclude himself or herself from the PA Class must comply with the terms set forth in the Settlement Agreement and the Class Notice.

23. Any PA Class Member who does not submit a timely, written request for exclusion from the PA Class will be bound by all proceedings, orders, and judgments in

this litigation, even if the PA Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the claims released in this case as specified in the Settlement Agreement, and even if such PA Class Member never received actual notice of this litigation or this proposed settlement.

24. Unless and until they have submitted a timely request for exclusion from the PA Class, PA Class Members and their legally authorized representatives are preliminarily enjoined from:

a. filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction;

b. filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any PA Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action); and

c. attempting to effect an opt-out of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based upon the claims released in the Settlement Agreement.

25. No later than **December 3, 2020**, any FLSA Class Member and each PA Class Member who does not timely opt out of the PA Class shall have the right to object to the settlement or to the request by Class Counsel for an award of attorneys' fees and expenses by filing written objections with the Clerk of Court and serving copies of the objections on Class Counsel and Defendants' counsel.

26. Objections must contain the following: (1) a heading that refers to this action by case name and case number; (2) a statement of the specific legal and factual basis for each objection; (3) a statement whether the objecting person intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number; (4) a description of any and all evidence the objecting person or entity may offer at the Final Approval Hearing, including but not limited to the names, addresses, and expected testimony of any witnesses; all exhibits intended to be introduced at the Final Approval Hearing; and documentary proof of the objecting person's membership in the PA Class or FLSA Class; and (5) a list of other cases in which the objector or counsel for the objector has appeared either as an objector or counsel for an objector in the last five years.

27. Failure to timely file and serve written objections in compliance with paragraphs 25 and 26 of this Order will preclude the PA or FLSA Class Member from objecting at the Final Approval Hearing.

28. No later than **December 8, 2020**, the Claims Administrator shall file and serve on counsel a list of all persons who have timely opted out of the PA Class with its determinations as to whether any request to opt out of the PA Class was not submitted timely; and it shall provide written notification to any PA Class Member whose request to opt out of the PA Class was untimely.

29. Pursuant to Fed. R. Civ. P. 23(e), a final approval hearing will be held on **December 15, 2020**, at **10:00 a.m.**, in **Courtroom 9A**, at the United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, to determine:



- a. whether this action satisfies the criteria for class certification set forth in Fed. R. Civ. P. 23(a) and (b);
- b. whether the proposed settlement is fair, reasonable and adequate in consideration of the factors set forth in Fed. R. Civ. P. 23(e)(2);
- c. whether the prerequisites to certify the FLSA Collective Action have been satisfied for settlement purposes, including that the settlement is a fair and reasonable resolution of a *bona fide* dispute over FLSA provisions;
- d. whether final approval should be granted;
- e. whether a final judgment should be entered dismissing the claims of the two Settlement Classes with prejudice;
- f. an award of attorneys' fees and expenses; and
- g. other such matters as the Court may deem appropriate.

30. The Court retains exclusive jurisdiction over this action to consider all matters arising out of or connected with the Settlement Agreement.

/s/ Timothy J. Savage  
TIMOTHY J. SAVAGE, J.