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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX LITIGATION CENTER

JUL 01 2016

ALAN CARLSON, Clerk of the Court
ppw
BY P RIEF

Attorneys for Plaintiffs GILDARDO MORALES
and EMILIO BENITEZ individually and on behalf of all
others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CIVIL COMPLEX CENTER

GILDARDO MORALES, EMILIO
BENITEZ individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

GREENLEAF 4 SOCO, LLC, a California
Limited Liability Company; doing business
as GREENLEAF GOURMET
CHOPSHOP, LLC; and DOES 1 through
50, inclusive,

Defendants,

Defendants.

Case No. 30-2014-00754353-CU-OE-CXC

Assigned for All Purposes To:
Honorable Thierry P. Colaw

CLASS ACTION

**SECOND AMENDED [PROPOSED] ORDER
GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 1, 2016
Time: 10:30 a.m.
Dept.:CX-105

Complaint Filed: October 31, 2014
Trial Date: None Set

This matter came on for hearing on July 1, 2016, at 10:30 a.m. in Department CX-105 of
the above-captioned court on Plaintiffs' Motion for Preliminary Approval of Class Action
Settlement, upon the terms and conditions set forth in the Class Action Settlement and Release

1 between Plaintiffs Gildardo Morales and Emilio Benitez ("Plaintiffs") and Greenleaf 3 Pacific
2 Plaza, LLC, and Greenleaf 4 Soco, LLC ("Greenleaf" or "Defendants") in this matter.

3 The Court, having fully reviewed the Motion for Preliminary Approval of Class Action
4 Settlement, the Memorandum of Points and Authorities and Declarations filed in support thereof,
5 the Settlement Agreement, including the Notice of Class Action Settlement, Claim Forms and
6 Reminder Postcards ("Notices"), and in recognition of the Court's duty to make a preliminary
7 determination as to the reasonableness of any proposed class action settlement, and if
8 preliminarily determined to be reasonable, to ensure proper notice is provided to Settlement Class
9 members in accordance with due process requirements, and to set a Final Approval Hearing to
10 consider the proposed Settlement Agreement as to the good faith, fairness, adequacy and
11 reasonableness of any proposed settlement, and having heard the argument of Counsel for the
12 respective parties, the Court **HEREBY MAKES THE FOLLOWING DETERMINATIONS**
13 **AND ORDERS:**

14 It appears to the Court on a preliminary basis that the Gross Fund Value Settlement is fair
15 and reasonable to the Settlement Class Members when balanced against the probable outcome of
16 further litigation relating to maintaining class certification, liability and damages issues, potential
17 appeals and Defendants' financial position. It further appears that significant investigation,
18 research, and litigation has been conducted such that counsel for the Parties at this time are able
19 to reasonably evaluate their respective positions. It further appears that the Settlement at this time
20 will avoid substantial costs, delay and risks that would be presented by the further prosecution of
21 the litigation. It further appears that the proposed Settlement has been reached as the result of
22 intensive, serious and non-collusive negotiations between the Parties. **ACCORDINGLY, GOOD**
23 **CAUSE APPEARING, THE MOTION FOR PRELIMINARY APPROVAL OF CLASS**
24 **ACTION SETTLEMENT IS HEREBY GRANTED, AND AS A PART OF SAID**
25 **PRELIMINARY APPROVAL, THE COURT HEREBY ORDERS THAT THE SETTLEMENT**
26 **CLASS BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY, AND**
27 **THAT JAMES HAWKINS AND GREGORY MAURO OF JAMES HAWKINS APLC, BE**
28 **CONDITIONALLY AND PRELIMINARILY APPOINTED CLASS COUNSEL.**

1 MORE SPECIFICALLY, THE COURT FINDS AS FOLLOWS:

2 I. The Court finds on a preliminary basis that the Settlement And Release of Claims
3 (“Settlement Agreement”) incorporated in full by this reference and made a part of this Order
4 Granting Preliminary Approval, appears to be within the range of reasonableness of a settlement
5 which could ultimately be given final approval by this Court. The Court preliminarily approves
6 of the Settlement pursuant to California Rules of Court, Rule 3.769(d) as to the Releasing Parties,
7 the Released Claims and the Released Parties, finding that the terms of the Settlement Agreement
8 are fair, reasonable, and adequate, pursuant to Section 382 of the California Code of Civil
9 Procedure.

10 II. The Court notes that Defendants Greenleaf 3 Pacific Plaza, LLC and Greenleaf 4
11 SOCO, LLC ("Defendants") have agreed to a Gross Fund Value Settlement of \$350,000.00.
12 Defendants will pay a minimum of 50% of the Gross Fund Value Settlement for claims to
13 Settlement Class Members. The Gross Fund Value also includes Attorneys' Fees and Costs, the
14 Class Administrator's costs, payment to the LWDA, and Class Representative Enhancements to
15 the Class Representatives.

16 III. The Court finds that the elements have been established to support conditional
17 certification of the Settlement Classes for settlement purposes, with Plaintiffs acting as the class
18 representatives.

19 IV. The Court hereby appoints, for settlement purposes, Plaintiffs Gildardo Morales
20 and Emilio Benitez as the Class Representatives. The Court further finds that James Hawkins and
21 Gregory Mauro of James Hawkins APLC have established adequacy to be appointed as Class
22 Counsel. The Court therefore appoints James Hawkins and Gregory Mauro of James Hawkins,
23 APLC as Class Counsel.

24 V. The Settlement Class provisionally certified by this Order for settlement purposes
25 includes all Class Members employed by Defendants at any time during the period of October 31,
26 2010 through December 3, 2015, (“Settlement Class Period”) who fail to opt out of the settlement
27 provided for herein; and the FLSA Class is defined as all members of the California Class who
28 commenced employment with either Defendants on or after October 31, 2011, through December

1 3, 2015, and who submit valid claim forms and who also opt into the FLSA Settlement Class as
2 provided for in paragraph 10.4 of the Settlement. It is estimated there are approximately 550 in
3 the Settlement Class.

4 VI. The Court approves Simpluris Inc. to serve as the Settlement Claims Administrator
5 and preliminarily approves the Class Administrator's costs in an amount expected not to exceed
6 \$25,000.

7 VII. The Court finds that the proposed manner of Notice is adequate.

8 VIII. The Court further hereby approves the proposed Notice of Class Action
9 Settlement, Claim Form, Reminder Postcard and Second Reminder Postcard (attached as Exhibits
10 A-D to the Settlement Agreement and Orders them to be mailed in English and Spanish.

11 IX. The Court finds that the Settlement Notice Packet constitutes the best notice
12 practicable under the circumstances, is in full compliance with the laws of the State of California
13 and, to the extent applicable, the United States Constitution and the requirements of due process.
14 The Court further finds that the Settlement Notice Packet fully and accurately informs Settlement
15 Class members of all material elements of the proposed Settlement, of each Settlement Class
16 member's right to make a claim, or be excluded from the Settlement Classes, and each Settlement
17 Class member's right and opportunity to object to the proposed Class Action Settlement.
18 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES THE
19 PROPOSED SETTLEMENT NOTICE PACKET TO THE CLASS AND FINDS that mailing to
20 the last known address to members of the Class, as specifically described within the Settlement
21 Agreement, constitutes an effective method of notifying Settlement Class members of their rights
22 with respect to the proposed Settlement. **ACCORDINGLY, IT IS HEREBY ORDERED that:**

23 X. Defendant shall within five (5) business days after entry of this Order Granting
24 Preliminary Approval provide the Class Administrator with the name, last known address,
25 employment dates during the Settlement Class Period, and data to determine the number of Work
26 Shifts actually incurred by each Class Member during the Settlement Class Period in a readable
27 spreadsheet, and the number of Work Shifts employed by each Settlement Class member during
28 the Settlement Class Period.

1 XI. IT IS FURTHER ORDERED that within fifteen (15) calendar days after receipt of
2 the class list and data, the Settlement Class Administrator shall mail the Notices to the Settlement
3 Class members via first-class regular U.S. Mail. As provided above, Settlement Class members
4 will have until 60 calendar days from the mailing date of the Notices to submit a claim form,
5 request for exclusion or file objections to the Settlement. Prior to mailing, the Settlement Class
6 Administrator will perform a search based on the National Change of Address Database or any
7 other similar services available (such as provided by Experian) to update and correct for any
8 known or identifiable address changes. Within thirty (30) days of the expiration of the Claim
9 Deadline, the Settlement Class Administrator shall cause to be mailed the Reminder Postcard
10 attached as Exhibit C to the Settlement to those Settlement Class Members who have not yet
11 submitted a Claim Form, or requested to be excluded. Within fifteen (15) days of the expiration
12 of the Claim Deadline, the Settlement Claims Administrator shall cause to be mailed the Second
13 Reminder Postcard attached as Exhibit D to the Settlement Agreement to those Settlement Class
14 Members who have not yet submitted a Claim Form, or requested to be excluded. The Settlement
15 Administrator will also translate the Class Notice, Claim Form, Requests for Exclusion and
16 Reminder Postcards into Spanish.

17 XII. IT IS FURTHER ORDERED that any Claim Form must be postmarked no later
18 than sixty (60) days after the Notice is mailed to the Settlement Class members.

19 XIII. IT IS FURTHER ORDERED that any Request for Exclusion must be postmarked
20 no later than sixty (60) days after the Notice is mailed to the Settlement Class Members.

21 XIV. IT IS FURTHER ORDERED that any dispute submitted by a Settlement Class
22 Member shall have 60 calendar days from the date the Notice is mailed to dispute the information
23 in the Claim Form.

24 XV. IT IS FURTHER ORDERED that Settlement Class Members who wish to object
25 to the Settlement must file with the Orange County Superior Court and serve on one of the
26 counsel for the Parties before the expiration of the sixty-day (60) Claim Deadline a signed written
27 statement that sets for the Settlement Class Member's objection to the Settlement, including the
28 grounds for the objection. The statement shall also indicate whether the Class Member intends to

1 appear and comment or object at the Final Approval Hearing; failure to so indicate with constitute
2 a waiver of the right to appear at the hearing.

3 XVI. IT IS FURTHER ORDERED that the Final Fairness Hearing shall be held at 10:30
4 a.m. on October 21, 2016 in Department CX-105 of the above captioned Courthouse located at
5 751 W. Santa Ana Blvd., Santa Ana, California 92701 to consider the fairness, adequacy and
6 reasonableness of the proposed Settlement preliminarily approved by this Order Granting
7 Preliminary Approval, and to consider the application of Class Counsel for an award of
8 reasonable attorneys' fees and costs, and the Class Representatives' Enhancement Awards. The
9 Court may continue the Final Fairness Hearing to another date at its discretion.

10 XVII. IT IS FURTHER ORDERED that all briefs and materials in support of an Order
11 Granting Final Approval and application for attorneys' fees and costs and Class Representative's
12 Enhancement Award shall be filed with this Court no later than sixteen (16) court days before the
13 date set for the Final Fairness Hearing.

14 XVIII. IT IS FURTHER ORDERED that, if for any reason the Court does not execute
15 and file an Order Granting Final Approval and Judgment, or if the Effective Date does not occur
16 for any reason whatsoever, the Settlement Agreement and the proposed Settlement which is the
17 subject of this Order and all evidence, briefs and proceedings had in connection therewith shall be
18 without prejudice to the status quo ante rights of the Parties to the litigation as more specifically
19 set forth in the Settlement Agreement.

20 XIX. IT IS FURTHER ORDERED that, pending further order of this Court, all
21 proceedings in this matter except those contemplated herein and in the Settlement Agreement are
22 stayed.

23 The Court expressly reserves the right to adjourn or continue the Final Fairness Approval
24 Hearing from time to time without further notice to the Class.

25 **IT IS SO ORDERED.**

26 Dated: 7/1/16, 2016


THIERRY COLAW

JUDGE OF THE SUPERIOR COURT