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ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego

07/09/2021 at 06:39:55 PM

FILED
Clerk of the Superior Court
By **Erin Sorianosos, Deputy Clerk**

JUL 22 2021

By: A. TAYLOR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

640 Tenth LP dba Cowboy Star Restaurant and
Butcher Shop, individually, and on behalf of
all others similarly situated,

Plaintiff(s),

vs.

COUNTY OF SAN DIEGO; DEPARTMENT
OF ENVIRONMENTAL HEALTH; and
CALIFORNIA DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL;
DOES 1 THROUGH 10, inclusive,

Defendant(s).

Case No. 37-2021-00001129-CU-MC-CTL

Assigned for All Purposes to:
Judge Joe R. Wohlfeil
Dept. C-73

CLASS ACTION

**[PROPOSED] PRELIMINARY APPROVAL
ORDER**

[IMAGED FILE]

Complaint Filed: January 11, 2021

1 WHEREAS, the above-styled Action¹ was filed on January 11, 2021;

2 WHEREAS, Plaintiff 640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop ("640
3 Tenth"), on behalf of itself and others similarly situated, and Defendants County of San Diego and
4 County of San Diego Department of Environmental Health and Quality ("County Defendants"),
5 have entered into a Settlement Agreement resolving the Action as to these two defendants, subject
6 to Court approval;

7 WHEREAS, the Action was settled as a result of arm's-length negotiations, investigation
8 and discovery sufficient to permit counsel and the Court to act knowingly, and counsel are
9 experienced in similar litigation; and

10 WHEREAS, the parties have made an application for an order preliminarily approving the
11 settlement of this Action, conditionally certifying the Class for settlement purposes, and approving
12 the form and method of notice upon the terms and conditions set forth in the Settlement Agreement
13 filed with this Court on 7-9, 2021, together with all exhibits thereto, and the Court has
14 considered the Settlement Agreement and records in this case, and the arguments of counsel at a
15 hearing held on July 22, 2021;

16 THEREFORE, for good cause appearing, it is hereby ordered as follows:

17 **I. The Class Is Conditionally Certified**

18 1. The Court conditionally certifies the following Class for settlement purposes:

19 All restaurants and limited food preparation facilities in the County of San Diego that
20 paid or were required to pay annual permit fees to the County Defendants from March
21 16, 2020 through June 15, 2021, and who did not submit a valid request to be
excluded from the Class.

22 2. The Court preliminary finds the prerequisites for a class action have been met, in
23 that: (a) the Class is so numerous that joinder of all individual Class Members is impracticable;
24 (b) there are questions of law and fact common to the Class and those common questions of law and
25 fact predominate over any individual questions; (c) the claims of the Class Representative are typical
26 of the claims of the Class; (d) the Class Representative and Class Counsel will fairly and adequately

27 _____
28 ¹ Throughout this Order, the capitalized words are given the same meaning ascribed in the Settlement Agreement.

1 represent the interests of the Class; and (e) a class action is superior to other available methods for
2 the fair and efficient adjudication of the controversy.

3 3. The Court appoints 640 Tenth as the Class Representative.

4 4. The Court appoints Kabateck LLP and Blood Hurst & O'Reardon, LLP as Class
5 Counsel to represent the Class. Any Class Member may enter an appearance in the Action at his or
6 her own expense, individually or through counsel. Notices of Appearance must be filed with the
7 Court and served on the parties identified in the Class Notice on or before ~~10-29-21~~ (21
8 days before Fairness Hearing set below). All Class Members who do not enter an appearance will
9 be represented by Class Counsel.

10 **II. The Settlement Agreement Is Preliminarily Approved, And The Fairness Hearing Is**
11 **Set; Provisions For Opting Out And Objecting**

12 1. The Court preliminarily approves the Settlement Agreement and the terms and
13 conditions of settlement set forth in the Settlement Agreement as fair, reasonable and adequate. The
14 terms of the Settlement Agreement are sufficiently within the range of reasonableness to warrant
15 notice to the Class and are subject to further consideration at the Fairness Hearing.

16 2. The Court will hold a Fairness Hearing on ~~10-29-21~~ at ~~9:00~~ a.m., in
17 Department C-73 at the Superior Court for the County of San Diego, 330 West Broadway, San
18 Diego, California, 92101, to consider: (a) whether certification of the Class for settlement purposes
19 should be confirmed; (b) whether the proposed settlement of the Action on the terms set forth in the
20 Settlement Agreement should be approved as fair, just, reasonable, adequate and in the best interests
21 of the Class; (c) the application by Class Counsel for an award of attorneys' fees and expenses;
22 (d) the application for a Class Representative service award; (e) whether the release of Released
23 Claims should be provided; (f) whether the Court should enter the [Proposed] Final Order and
24 Judgment; and (g) ruling upon such other matters as the Court may deem just and appropriate.

25 3. The Fairness Hearing may, from time to time and without further notice to the Class
26 Members (except those who have filed timely and valid objections), be continued or adjourned by
27 order of the Court.

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1 4. The Parties may further modify the Settlement Agreement prior to the Fairness
2 Hearing so long as such modification does not materially change the terms of the settlement
3 provided thereunder. The Court may approve the Settlement Agreement with such modifications as
4 may be agreed to by the Parties, if appropriate, without further notice to the Class Members.

5 5. Objections by any Class Member to the fairness, reasonableness, or adequacy of the
6 Settlement Agreement shall be heard, and any papers submitted in support of said objection shall be
7 considered by the Court at the Fairness Hearing only if, on or before 10-8-21 (21 days before
8 the Fairness Hearing set above), such objector files with the Clerk of the Superior Court of the
9 County of San Diego and serves upon the parties' counsel a written objection consistent with the
10 terms of the Full Class Notice. In order to be considered for hearing, all objections must be actually
11 received by the counsel identified in the Class Notice on or before 10-8-21 (21 days before
12 the Fairness Hearing set above). A Class Member need not appear at the Fairness Hearing in order
13 for his or her objection to be considered.

14 6. Any Class Member who wishes to opt out of the Class must mail a written Request
15 for Exclusion to the County Defendants, postmarked or delivered no later than 10-8-21 (21
16 days before the Fairness Hearing set above). The written request must be signed by a person
17 authorized to act on behalf of the Class Member, and otherwise comply with the requirements for
18 exclusion as set forth in the Full Class Notice. Any Class Member who does not submit a valid and
19 timely Request for Exclusion will be bound by the judgment and orders in this Action.

20 7. No later than thirty-five (35) days before the Fairness Hearing, Plaintiff shall file
21 opening papers in support of the motion for final approval of the settlement and any application for
22 an award of attorneys' fees and expenses and a service award for the Class Representative. No later
23 than five (5) court days before the Fairness Hearing, the parties shall file their reply papers as
24 needed, including as needed to respond to any valid and timely objections. The reply papers shall
25 be served upon any objector who has complied with the provisions of paragraph II.5 of this Order.

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1 **III. The Court Approves The Form And Method Of Class Notice**

2 1. Having considered the Full Class Notice and Email Notice, attached as Exhibits A
3 and B to the Settlement Agreement, and the Notice Plan attached as Exhibit C to the Settlement
4 Agreement, the Court approves the form and contents of the class notice and the Notice Plan.

5 2. No later than seventy-five (75) days before the date of the Fairness Hearing, as set in
6 paragraph II.2 of this Order, County Defendants are ordered to disseminate class notice pursuant to
7 the Settlement Agreement and Notice Plan.

8 3. The Court finds that the notice to the Class Members regarding settlement of the
9 Action, including the content of the notices and method of dissemination to the Class Members in
10 accordance with the terms of Settlement Agreement, constitute the best notice practicable under the
11 circumstances and constitute valid, due and sufficient notice to all Class Members, complying fully
12 with the requirements of California Code of Civil Procedure § 382, California Rules of Court Rules
13 3.766 and 3.769(f), the California and United States Constitutions, and any other applicable law.

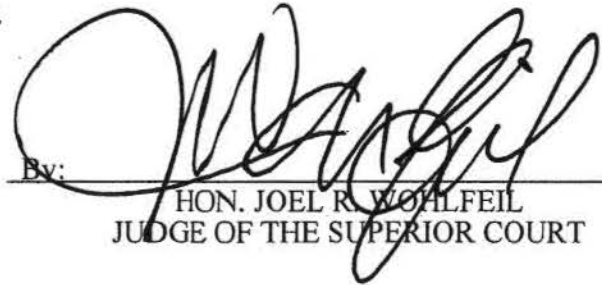
14 4. The costs of disseminating the class notice and otherwise implementing the Notice
15 Plan pursuant to the Settlement Agreement shall be paid by County Defendants.

16 5. No later than five (5) days before the Fairness Hearing, the County Defendants shall
17 file with the Court a list of Class Members who have excluded themselves from the Settlement
18 Agreement and a declaration with facts sufficient to inform the Court that class notice was
19 disseminated in accordance with this Order.

20 **IT IS SO ORDERED.**

21 Dated:

22 7-22-21
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By: 
HON. JOEL R. WOHLFEIL
JUDGE OF THE SUPERIOR COURT