

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/22/2021 at 11:49:00 AM

Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

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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,

vs.

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

Defendants.

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

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

CLASS ACTION

**REPLY IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

[IMAGED FILE]

Date: October 29, 2021
Time: 9:00 a.m.
Dept: C-73

Complaint Filed: January 11, 2021
Trial Date: Not Yet Set

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1 Plaintiff 640 Tenth LP respectfully submits this reply memorandum in support of its motion
2 for final approval of the class action settlement. Plaintiff's opening memorandum, filed on
3 September 24, 2021, sets forth in detail how the settlement is fair, reasonable, and adequate and
4 should be approved by the Court. No one has opposed the motion and no Class member objected to
5 or opted out of the settlement, evidencing strong support for the settlement. This reply brief updates
6 the Court on the settlement process and provides further evidence that the settlement is fair,
7 reasonable and adequate and should be approved by the Court.

8 **I. Dissemination of Class Notice, Opt Outs, and Objections**

9 As directed by the Court in its preliminary approval order, individual notice of the proposed
10 settlement was emailed or mailed to Class members. Declaration of Joshua M. Heinlein ("Heinlein
11 Decl."), ¶¶ 3-4. In addition, the Full Class Notice has been publicly available on the County
12 Defendants' websites since August 12, 2021. *Id.*, ¶ 5. The County Defendants also posted
13 documents and information on their websites, including the Settlement Agreement, Preliminary
14 Approval Order, and Class Action Complaint. *See id.*, Ex. 2.

15 The last day for Class members to opt out or object was October 8, 2021. No opt outs or
16 objections have been received. *See id.*, ¶ 6; Supplemental Declaration of Leslie E. Hurst ("Supp.
17 Hurst Decl."), ¶ 2. The sole Class member that contacted Class Counsel did so to ask whether it
18 needed to take any action to receive a permit fee refund or reduction. *Id.*, ¶ 3. Class Counsel
19 explained to that Class member that it did not need to take any action to receive the settlement
20 benefits. *Id.*

21 **II. Class Members Support the Settlement**

22 In approving the class action settlement and awarding attorneys' fees, the court considers the
23 reaction of Class members. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010);
24 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). Absent a significant number of
25 dissents, the settlement should be deemed approved by those most directly affected by it—in this
26 case, restaurant businesses in San Diego County who were charged or paid permit fees during the
27 COVID-19 pandemic. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App.
28

1 4th 1135, 1153 (2000) (one factor that “lead[s] to a presumption the settlement was fair” is that only
2 “a small percentage of objectors”—80 out of 5,454 Class members—came forward).

3 Generally, class action settlements draw some dissent. A notable aspect of this case is that
4 there are no objections or opt outs. No Class member has objected to the settlement relief (on
5 average, \$344 per Class member) (Supp. Hurst Decl., ¶ 4), to the attorneys’ fees, or to Plaintiff’s
6 service award. The fact that no objections or exclusion requests were made strongly supports
7 approval of the Settlement.

8 **III. Conclusion**

9 For the reasons set forth above and in its opening brief, Plaintiff respectfully requests that
10 the Court approve the Settlement with the County Defendants, award the requested attorneys’ fees
11 and expenses to Plaintiff’s Counsel, and award the requested service award to Plaintiff.

12 A proposed order granting final approval, awarding attorneys’ fees and service awards, and
13 entering judgment against the County Defendants is concurrently submitted.

14 Respectfully submitted,

15 Dated: October 22, 2021

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17 By: *s/ Leslie E. Hurst*

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DECLARATION OF SERVICE

640 Tenth LP v. County of San Diego
San Diego County Superior Court, Case No. 37-2021-00001129-CU-MC-CTL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 501 West Broadway, Suite 1490, San Diego, California 92101.

2. That that on October 22, 2021, I electronically filed the foregoing with the Clerk of the Court using One Legal Online Court Services, and electronically served the foregoing upon the attorney of record for each party in this case at the e-mail address(es) registered for such service through One Legal Online Court Services as follows:

*County of San Diego; and Dept of
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3. Parties may access this filing through the Court's website.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 22, 2021, at San Diego, California.

s/ Janet Kohnenberger

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