

**FILED**  
Superior Court of California  
County of Los Angeles

12/22/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: \_\_\_\_\_ A. He \_\_\_\_\_ Deputy

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Attorneys for Plaintiff JUAN CARLOS RAMIREZ ROBLES, on behalf of himself and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

JUAN CARLOS RAMIREZ ROBLES, on behalf of himself and all others similarly situated,

Plaintiffs,

v.

FM MEXICAN GRILL INC., a California corporation, MI RANCHITO MEXICAN GRILL, INC., a California corporation; ANGELICA M. MALDONADO, an individual; and DOES 1 thru 100, inclusive,

Defendants.

CASE NO.: BC716450  
*Consolidated with 19STCV16488*

[Assigned to the Hon. Stuart Rice in Dept. 1]

~~PROPOSED~~ **ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY**

This Court, having considered the Motion of plaintiff Juan Carlos Ramirez Robles (“Plaintiff”), for Preliminary Approval of the Class Action Settlement and Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations of David D. Bibiyan and Benjamin Hill, the Stipulation Class Action Settlement and Release of Claims (the “Settlement Agreement”), the Notice of Proposed Class Action Settlement (“Class Notice”), and the other documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

1. The definitions set out in the settlement Agreement are incorporated by reference into this Order; all terms defined therein shall have the same meaning in this Order.
2. The Court certifies the following settlement class for the purpose of settlement only: the 230 employees on the Class List provided to Plaintiff’s Counsel on December 30, 2019, which

1 includes only the non-exempt, hourly-paid employees of defendants FM Mexican Grill, Inc., Mi  
2 Ranchito Mexican Grill, Inc., and Angelica M. Maldonado (collectively, “Defendants”) employed  
3 from August 8, 2014 to December 30, 2019 (“Class Period”) in California. These employees shall  
4 be referred to as “Class Members” or the “Settlement Class” or “Settlement Class Members.”

5 3. The Court preliminarily appoints named plaintiff Juan Carlos Ramirez Robles as  
6 Class Representative, and David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C., as well  
7 as Benjamin Hill of Inhouse Co. Law Firm, as Class Counsel.

8 4. The Court preliminarily approves the proposed class settlement upon the terms and  
9 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the  
10 settlement appears to be within the range of reasonableness of settlement that could ultimately be  
11 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement  
12 amount is fair, adequate and reasonable as to all potential settlement class members when balanced  
13 against the probable outcome of further litigation relating to liability and damages issues. It further  
14 appears that extensive and costly investigation and research has been conducted such that counsel  
15 for the parties at this time are reasonably able to evaluate their respective positions. It further  
16 appears to the Court that the settlement at this time will avoid substantial additional costs by all  
17 parties, as well as the delay and risks that would be presented by the further prosecution of the  
18 Action. It further appears that the settlement has been reached as the result of intensive, non-  
19 collusive, arms-length negotiations utilizing an experienced third party neutral.

20 5. The Court, approves, as to form and content, the Class Notice that has been submitted  
21 herewith.

22 6. The Court directs the mailing of the Notice of Class Action by First-Class U.S. Mail  
23 to the Class Members in accordance with the procedures set forth in the Settlement Agreement. The  
24 Court finds that dissemination of the Notice of Class Action set forth in the Settlement Agreement  
25 complies with the requirements of law and appears to be the best notice practicable under the  
26 circumstances.

27 7. The Court hereby preliminarily approves the definition and disposition of the Gross  
28 Settlement Amount of \$210,000.00, to be paid according to the schedule set forth in the Settlement

1 Agreement, which is inclusive of: attorneys’ fees not to exceed ~~thirty five percent (35%)~~ of the  
2 Gross Settlement Amount, in addition to actual costs incurred not to exceed \$35,000.00; an incentive  
3 award of ~~\$10,000.00~~ to Plaintiff; costs of settlement administration of no more than \$7,500.00; and  
4 Private Attorneys’ General Act of 2004 (“PAGA”) penalties in the amount of \$10,000.00, of which  
5 \$7,500.00 (75%) will be paid to the Labor and Workforce Development Agency (“LWDA”) and  
6 \$2,500.00 to “Aggrieved Employees”, defined all members of the settlement class employed by  
7 Defendants from May 13, 2018 to June 11, 2021 (“PAGA Period”).

8 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be  
9 paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

10 9. Defendant shall pay the Gross Settlement Amount in three (3) installment payments  
11 to the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in  
12 an interest-bearing qualified settlement account (“QSF”) with an FDIC insured banking institution.  
13 The first payment of fifty thousand dollars and no cents (\$50,000.00) will be made by Defendants  
14 to the Al Mohajerian, a Professional Law Corporation, Client Trust Account within twenty-four (24)  
15 hours of signing the Settlement Agreement, and Defendants’ Counsel shall confirm that said amount  
16 was received within forty-eight (48) hours of the signing of the Settlement Agreement by  
17 Defendants.

18 10. Defendants’ Counsel shall forward said amount to the Settlement Administrator  
19 within seven (7) calendar days of final approval of the Settlement. The second payment of fifty  
20 thousand dollars and no cents (\$50,000.00) shall be made at final approval of settlement directly to  
21 the Settlement Administrator within seven (7) calendar days of final approval of the Settlement. A  
22 final payment of one hundred ten thousand dollars and no cents (\$110,000.00) will be made twelve  
23 (12) months after final approval of settlement directly to the Settlement Administrator.

24 11. The Court deems Phoenix Settlement Administrator (“Phoenix”) the Settlement  
25 Administrator, and payment of administrative costs, not to exceed \$7,500.00, out of the Gross  
26 Settlement Amount for services to be rendered by Phoenix on behalf of the class.

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28 12. No later than seven (7) calendar days from the Response Deadline, the Settlement

1 Administrator shall provide counsel for the Parties with a declaration attesting to the completion of  
2 the notice process, including the number of attempts to obtain valid mailing addresses for and re-  
3 sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests  
4 for Exclusion and written objections received by the Settlement Administrator.

5 13. The Court directs Defendant to, within five (5) calendar days of this Order, provide  
6 the Settlement Administrator with the “Class List” for Class Members. The Class list will include  
7 for each Class Member: (1) name, last known address(es) and last known telephone number(s); (2)  
8 Social Security Number; and (3) the hire dates and termination dates for each Settlement Class  
9 Member (“Class List”), which shall be made available to Class Counsel.

10 14. Upon receipt of the Class List, the Settlement Administrator shall perform an address  
11 search using the United States Postal Service National Change of Address (“NCOA”) database and  
12 update the addresses contained on the Class List with the newly found addresses, if any. To the  
13 extent that this process yields an updated address, that updated address shall replace the last known  
14 address and be treated as the new last known address for purposes of this Settlement, and for  
15 subsequent mailings.

16 15. Within seven (7) calendar days of receiving the Class List from Defendant, the  
17 Settlement Administrator shall mail the Notice of Class Action Settlement in English and Spanish  
18 to Class members via first-class regular U.S. Mail using the most current mailing address  
19 information available.

20 16. The deadline by which Class Members may dispute the number of Workweeks  
21 worked, and the deadline by which Class Members may opt out or object, shall be forty-five (45)  
22 days from the date of the mailing of the Notice of Class Action Settlement, unless the notice is re-  
23 mailed. This shall be known as the “Response Deadline.” Settlement Class Members who receive  
24 a re-mailed Notice of Class Action Settlement shall have until the later of: (a) the Reponses  
25 Deadline; or (b) fifteen (15) calendar days after the remailing of the Notice of Class Action  
26 Settlement to opt out, object in writing, or submit a Workweek Dispute.

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28 17. Any Class Member wishing to opt out from the Settlement must postmark a written

1 Request for Exclusion to the Settlement Administrator on or before the Response Deadline. The  
2 Request for Exclusion must include: (1) the name, address, Social Security Number, and telephone  
3 number of the Settlement Class Member requesting exclusion; (2) contain a statement expressing  
4 that the Settlement Class Member elects to be excluded from the Settlement; (3) be signed by the  
5 Settlement Class Member; and (4) must be postmarked stamped by the Response Deadline. (as the  
6 same may be extended due to remailing) and returned to the Settlement Administrator at the  
7 specified address or fax number. The date of the postmark on the return mailing envelope receipt  
8 confirmation will be the exclusive means to determine whether a Request for Exclusion has been  
9 timely submitted.

10 18. Any Class Member who does not submit a timely and valid Request for Exclusion  
11 shall be deemed a “Participating Class Member” and be bound by the terms of the Settlement,  
12 including the releases provide therein.

13 19. Settlement Class Members will have the opportunity, should they disagree with  
14 Defendants’ records regarding the dates of employment stated on their Notice of Class Action  
15 Settlement, to provide documentation and/or an explanation to show contrary information by the  
16 Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties  
17 to determine whether an adjustment is warranted. The Settlement Administrator shall determine the  
18 eligibility for, and the amounts of, any Individual Settlement Payments and Individual PAGA  
19 Payments under the terms of this Agreement. The Settlement Administrator’s determination of the  
20 eligibility for and amount of any Individual Settlement Payment and Individual PAGA Payment  
21 shall be binding upon the Settlement Class Members, Aggrieved Employees and the Parties. In the  
22 absence of circumstances indicating fraud, manipulation or destruction, Defendants’ records will be  
23 given a rebuttable presumption of accuracy. However, if a Class Member produces evidence to the  
24 contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member  
25 and will make the final decision as to the number of Workweeks that should be applied. Should the  
26 Parties and the Settlement Administrator be unable to resolve a Workweek Dispute in a manner that  
27 is satisfactory to Plaintiff, Defendants, and the disputing party, the Court shall ultimately adjudicate  
28 the dispute.

1           20.           The Notice of Class Action Settlement shall state that Settlement Class Members  
2 who wish to object or comment to the Settlement may do so in person at the Final Approval Hearing  
3 and/or in writing. Any written objection must be mailed. Any written objection (“Notice of  
4 Objection”) must be sent to the Settlement Administrator by the Response Deadline. The Settlement  
5 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants’  
6 counsel and attach it to the declaration it provides to Class Counsel for submission in support of the  
7 Motion for Final Approval. The date of mailing on the envelope shall be deemed the exclusive  
8 means for determining that a Notice of Objection was timely received. The Notice of Objection  
9 must be signed by the Settlement Class Member and should state: (1) the full name of the Settlement  
10 Class Member; (2) the dates of employment of the Settlement Class Member; (3) the basis for the  
11 objection along with any legal authority; and (4) if the Settlement Class Member intends to appear  
12 at the final approval hearing.

13           21.           If a Class Member objects to the Settlement and opts out, the opt-out will control and  
14 the objection will be overruled.

15           22.           All papers filed in support of final approval, including supporting documents for  
16 attorneys’ fees and costs, shall be filed by T æ Á FÉGEGH , 2022.

17           23.           A Final Approval Hearing shall be held with the Court on R } ^ Á G ÉGEGH , 2022 at  
18 FENÉÁF : ==m in Department “1” of the above-entitled Court to determine: (1) whether the  
19 proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court;  
20 (2) the amount of attorneys’ fees and costs to award Class Counsel; (3) the amount of incentive  
21 award to the Class Representatives; (4) the amount to be paid to the Settlement Administrator; and  
22 (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

23           24.           Defendant shall deposit the Gross Settlement Amount, into a Qualified Settlement  
24 Account (“QSF”) to be established by the Settlement Administrator. Defendant shall provide all  
25 information necessary for the Settlement Administrator to calculate necessary payroll taxes  
26 including their official name, 8-digit state unemployment insurance tax ID number, and other  
27 information requested by the Settlement Administrator.

28           25.           Within seven (7) calendar days after payment of the full Gross Settlement Amount

1 by Defendant, as well payment by Defendant of the Employer Taxes, or as soon thereafter as  
2 practicable, the Settlement Administrator shall distribute all payments due under the Settlement,  
3 including the Individual Settlement Payments to Participating Class Members and Individual PAGA  
4 Payments to Aggrieved Employees, as well as the Court-approved payments for the Service Award  
5 to Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel, Administration Costs  
6 to the Settlement Administrator, and the LWDA Payment to the LWDA.

7 26. Any checks issued by the Settlement Administrator to Participating Class Members  
8 and Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days after the  
9 date of their issuance. If a Participating Class Member or Aggrieved Employee does not cash his  
10 or her Individual Settlement Payment within 180 days, the uncashed funds shall be canceled and  
11 funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue  
12 pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus  
13 accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to  
14 Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los  
15 Angeles County.

16 27. In the event the settlement does not become effective in accordance with the terms  
17 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to  
18 become effective for any reason, this Order shall be rendered null and void and shall be vacated,  
19 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

20 **IT IS SO ORDERED.**

21  
22 Dated:           , 2022



A handwritten signature in black ink that reads "Stuart M. Rice".

Stuart M. Rice / Judge

Judge of the Superior Court

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