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Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

PAM WALTER, JIMMY SMITH, LISA BARNHILL, ZACH WINN, WINDY CARLSON, DENISE PYRON, ASHLEY O'CONNOR, SUSAN HASKINS, PAULA EVERIST, KATHERINE BURNETT and JOHN DOES 1-10, individuals, and in their capacity as class representatives,
Plaintiffs,

v.

GATEWAY HOSPITALITY GROUP, INC; BOZEMAN LODGING INVESTORS, LLC d/b/a HILTON GARDEN INN BOZEMAN; WESTERN HOSPITALITY GROUP, LP d/b/a/ HILTON GARDEN INN OF MISSOULA; JWT HOSPITALITY GROUP BILLINGS, LLC d/b/a HILTON GARDEN INN BILLINGS; KALISPELL HOTEL, LLC d/b/a HILTON GARDEN INN KALISPELL; ALL OTHER GATEWAY HOSPITALITY GROUP MANAGED HOTELS IN MONTANA; and JOHN DOES 1-10,
Defendants.

Dept. No 1
Case No. DV 15-196

**ORDER GRANTING
FINAL APPROVAL OF
MEDIATED SETTLEMENT
AGREEMENT AND AWARD
OF FEES AND COSTS**

The parties have entered into a Mediated Settlement Agreement and now jointly move for final approval thereof. This Court has previously granted preliminary approval, certified the Class definition and approved the form and time of class notice. The matter came before the Court for a final fairness hearing on August 3, 2016, at 2 p.m. at the Missoula County courthouse in Missoula, Montana. No objections to the settlement were filed. This Court now makes the following findings of fact:

1. The parties filed a joint motion seeking the Court's preliminary approval of a settlement between the parties as set forth in the Mediated Settlement Agreement attached to the motion.
2. This Court preliminarily granted approval of the settlement and ordered that notice be given to the Class Members.
3. Notice has been given to the Class.
4. Due process requires that notice of a class settlement be made to absent Class Members through means designed to give the best notice practicable under the circumstances. The Court finds that the requirement of best practicable notice has been satisfied, that notice was more than adequate to inform members of the Class of the settlement, and that the notice and procedure complies with due process requirements.

5. The Mediated Settlement Agreement provides fair, reasonable and adequate consideration to the Class, considering the strengths and weaknesses of the class claims. The Mediated Settlement Agreement is fair, reasonable, adequate and in the best interests of Class Members.

6. The Mediated Settlement Agreement results from vigorous and extensive arm's length negotiations between the parties' experienced counsel. There has been no collusion between the parties in negotiating or drafting the Stipulation and Settlement Agreement.

7. Sufficient discovery and investigation has been undertaken to enable counsel and the Court to intelligently evaluate the class claims and Defendants' defenses.

8. The Class is represented by attorneys with considerable experience who have entered into the Mediated Settlement Agreement and recommend the settlement.

9. There has been no opposition or objection to the proposed settlement by members of the Class.

10. Out of all the class members, only three elected to opt out from the settlement.

a. The opt out form of Brenda Janni was validly submitted to

Plaintiffs' counsel and received on July 25, 2015. Ms. Janni

worked the 2010 Fourth of July event at the Kalispell Hilton Garden Inn. Ms. Janni would be entitled to \$0.78.

- b. On July 20, 2016, Michele Hockett left a voice mail at Plaintiffs' counsel's office. Ms. Hockett stated that she had worked only one shift for four hours and did not want to be a part of the class action lawsuit. Ms. Hockett said she was going camping and would be out of touch for ten days. Ms. Hockett worked at the Kalispell Hilton Garden Inn in May 2012. Ms. Hockett did not receive the earlier check. Ms. Hockett would be entitled to \$15.47 plus \$28.05 from the earlier checks.
- c. On August 1, 2016, Plaintiffs' counsel received an opt out from Edward J. Schmidt, III. Mr. Schmidt worked for the Kalispell Hilton Inn for two weeks as a dishwasher and only worked two banquets. Mr. Schmidt's earlier check was returned. The earlier check totaled \$132.96. Mr. Schmidt would also be entitled to \$73.35 with the final settlement.

11. The plan for distributing the net settlement proceeds to Class Members is fair, reasonable, adequate and in the best interests of the

Class and not unduly burdensome to Class Members. No Class member objected to the distribution plan.

12. At all times during the prosecution of this case, and in particular during the negotiation and approval of the Mediated Settlement Agreement, Class Plaintiffs and Class Counsel have fairly and adequately represented the Class and its members and have diligently pursued their interests in this litigation.

13. The class action settlement is fair, adequate and reasonable, meets the standards for court approval under Mont. R. Civ. P. 23(e) and is hereby finally approved.

14. The Court has reviewed the proposed distribution of the net settlement proceeds set forth in parties' joint motion and brief for preliminary approval. The proposed distribution for the net settlement proceeds is fair, reasonable and adequate, and is hereby approved.

15. Pursuant to the terms of the Mediated Settlement Agreement, Plaintiffs applied unopposed for an award of attorney fees in the amount of \$1,007,879.75 (25% of class benefit of \$4,031,519) plus actual costs incurred, including administrators' fees and mailing of notice, in the estimated amount of \$22,360.72, for a total award of fees and costs in the amount of \$1,030,240.47. The Court has separately entered an order

approving that award, to be paid from the new money portion of the class recovery.

16. Incentive awards are fairly typical in class action cases. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Such awards are discretionary and intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general. *Id.* (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir.2000)). Awards are generally sought after a settlement or verdict has been achieved. *Id.*

17. The Court hereby approves payment of incentive awards to Class Representatives Pam Walter, Jimmy Smith, Lisa Barnhill, Zach Winn, Windy Carlson, Denise Pyron, Ashley O'Connor, Susan Haskins, Paula Everist and Katherine Burnett in the amount of \$2,500 each. These payments shall be made from the fees and costs portion of the new money recovery and thus will not disadvantage any class member. Named Plaintiffs shall also participate in the class settlement in the same fashion as any other Class member.

18. All residual funds created as a result of any Class Member who cannot be located or who fails to negotiate a settlement check within 90 days of issuance shall be paid directly to Montana Legal Services Association.

FROM THE FORGOING, THIS COURT HEREBY ENTERS THE FOLLOWING ORDER AND FINAL JUDGMENT:

1. The class action Mediated Settlement Agreement is approved.
2. The action is dismissed with prejudice, and administration of the settlement shall be completed according to its terms.
3. Plaintiffs will implement the distribution of the class recovery fund, fees, costs and administrative expenses as set forth above.

DATED, this 3rd day of August 2016.


HON. LESLIE HALLIGAN
District Court Judge

C: John L. Amsden, Esq.
Anthony F. Jackson, Esq.
Jason Armstrong, Esq.
Robert C. Lukes, Esq.

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