

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

SEP 19 2016

Sherri R. Carter, Executive Officer/Clerk

By Aldwin Lim, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DAVID GARDNER, an individual, and
CHRISTOPHER W. KERBOW, an
individual, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

POPCORNOPOLIS, LLC, a California
limited liability company; and DOES 1
through 25, inclusive,

Defendants.

Case No. BC519587

ASSIGNED FOR ALL PURPOSES TO
JUDGE WILLIAM F. HIGHBERGER
DEPT. 322

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

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Central Civil West
AUG 19 2016
By: J. Franco

1 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement came on for hearing
2 before this Court, the Honorable William F. Highberger, on 9/19, 2016, at 10:30 am.
3 Defendant Popcornopolis, LLC (hereinafter referred to as "Defendant") did not oppose the Motion.
4 The Court having considered the papers submitted in support of the motion and having heard oral
5 argument of the parties, hereby finds and orders as follows:

6 1. The Court hereby preliminarily approves the proposed class settlement upon the
7 terms and conditions set forth in the Stipulation and Settlement Agreement, subject to reservation of
8 any determination on sums to be awarded for fees, costs and enhancements. The Court finds that on
9 a preliminary basis the Settlement appears to be within the range of reasonableness necessary for
10 preliminary approval by the Court. It appears to the Court that the Settlement amount is fair,
11 adequate, and reasonable as to all potential Settlement Class Members when balanced against the
12 probable outcome of further litigation, and ultimately relating to liability and damages issues. It
13 further appears that investigation and research has been conducted such that counsel for the parties at
14 this time are reasonably able to evaluate their respective positions. It further appears to the Court
15 that the Settlement at this time will avoid substantial additional costs by all parties, as well as the
16 delay and risks that would be presented by the further prosecution of the litigation. It appears that
17 the Settlement has been reached as a result of arms-length negotiations.

18 2. The Settlement Class is defined as:

19 All current and former product demonstration team members who
20 worked for Defendant in California from August 27, 2009, through the
21 date of entry of the Preliminary Approval Order.

22 3. The Settlement proposed has been negotiated at arm's length and is preliminarily
23 determined to be fair, reasonable, adequate and in the best interest of the Settlement Class defined
24 above and in the Settlement Agreement;

25 4. The Court conditionally finds that, for the purposes of approving this Settlement only
26 and for no other purpose, the proposed Settlement Class meets the requirements of certification of
27 California Code of Civil Procedure §382 and Rules 3.766 and 3.769 of the California Rules of Court:
28

1 (a) the proposed Settlement Class is ascertainable and so numerous that joinder of all members of the
2 Settlement Class is impracticable; (b) there are questions of law or fact common to the proposed
3 Settlement Class; (c) the claims of Plaintiffs David Gardner and Christopher W. Kerbow are typical
4 of the claims of the members of the proposed Settlement Class; (d) Plaintiffs and their counsel will
5 fairly and adequately protect the interests of the proposed Settlement Class; and (e) a Class Action is
6 superior to the other available methods for an efficient resolution of this controversy.

7 5. The Court hereby preliminarily appoints for settlement purposes only, Thomas W.
8 Falvey, Michael H. Boyamian, and Armand R. Kizirian of the Law Offices of Thomas W. Falvey
9 and John F. McCarthy of the Law Offices of John F. McCarthy as Settlement Class Counsel.

10 6. The Court confirms CPT Group, Inc. as the Settlement Administrator. Within
11 fourteen (14) business days of Preliminary Approval of this Settlement by the Court, Defendant shall
12 provide to the Settlement Administrator and Class Counsel the Class Data, which shall consist of a
13 database which will list the names, most current mailing address and telephone number, Social
14 Security Number, and the weeks of employment of each Settlement Class Member in the Settlement
15 class during the applicable Class Period.

16 7. All Settlement Class Members shall be given notice of this Settlement as set forth in
17 the Notice of Class Action Settlement ("Notice") attached as Exhibit 2 to the Declaration of Michael
18 H. Boyamian ("Boyamian Declaration"), filed in support of Plaintiffs' Motion for Preliminary
19 Approval of Class Action Settlement;

20 8. The Notice (and dates selected for the mailing and distribution of the Notice set forth
21 herein) fully complies with the requirements of California Code of Civil Procedure §382, Rules
22 3.766 and 3.769 of the California Rules of Court and due process, and constitutes the best notice
23 practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice
24 of settlement.

25 9. Settlement Class Members wishing to be excluded from the Settlement Class must
26 submit a Request for Exclusion Form, attached as Exhibit "3" to the Boyamian Declaration,
27 requesting exclusion from the Settlement on or before the expiration of the opt out period (45 days
28 after the date that the Notice is mailed). Such Request for Exclusion must contain the name, address,

1 telephone number, and the last four digits of the Social Security number of the person requesting
2 exclusion and a request to be excluded from the Settlement. The Request for Exclusion must be
3 returned to the Settlement Administrator, as described in the Notice attached as Exhibit "2" to the
4 Boyamian Declaration.

5 10. Any Class Member who does not request exclusion from the Settlement Class during
6 the opt out period may object to the Settlement, either personally or through an attorney, by
7 providing written notice that the Class Member is objecting to the Settlement Administrator, which
8 written notice must be postmarked no later than 45 days after the date of mailing Notice. The Notice
9 of Objections must include the Class Member's name, address, telephone number and the name of
10 this case (*Gardner, et al. v. Popcornopolis, LLC*). Any Class Member who has provided timely
11 notice that the Class Member is objecting may appear, personally or through an attorney, at the Final
12 Approval Hearing to present the Class Member's objections. Any objecting Class Member may also
13 file a brief or other legal memorandum in support of the Class Member's objections by submitting
14 such brief or legal memorandum to the Settlement Administrator with the Class Member's Notice of
15 Objections or by direct filing with the Court no later than five (5) days prior to the Final Approval
16 Hearing.

17 11. In the event the Settlement Administrator receives back a Settlement Class Member's
18 Notice with a forwarding address, the Settlement Administrator will send the Notice to the
19 forwarding address. In the event a Settlement Class Member's Notice is returned without a
20 forwarding address, the Settlement Administrator will perform one skip trace in an effort to identify
21 a new address, to which the Settlement Administrator will then send the Notice.

22 12. The Court will conduct a final approval and fairness hearing on 12/15/16 at
23 Haw, in Department 322 of the above captioned Court to determine the overall fairness of
24 the settlement and to fix the amount of attorneys' fees and costs to class counsel and enhancement to
25 the named Plaintiffs.

26 13. All further proceedings in this action shall be stayed except such proceedings
27 necessary to review, approve, and implement this Settlement.

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