

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA de LOURDES PARRA MARIN, on
behalf of herself and all other persons similarly
situated,

Plaintiff,

- against -

DAVE & BUSTER'S, INC., and
DAVE & BUSTER'S ENTERTAINMENT,
INC.,

Defendants.

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15 Civ. 3608 (AKH)

~~PROPOSED~~ FINDINGS AND ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT, CONDITIONAL CLASS CERTIFICATION
APPROVAL OF NOTICE PLAN, AND
SETTING A DATE AND TIME FOR THE FINAL APPROVAL HEARING

Presented to the Court for preliminary approval is a settlement of the litigation. The terms of the Proposed Settlement are set out in the Settlement Stipulation ("Stipulation") executed by counsel for the Parties on November 19, 2018.¹

Upon reviewing Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification and Approval of Notice Plan and the Declaration of Karin E. Fisch and documents attached thereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Class Certification. The Court preliminarily finds, for settlement purposes only, that the requirements of the United States Constitution, the Federal Rules of Civil Procedure, the

¹ Capitalized terms not otherwise defined in this Order shall have the same meaning ascribed to them in the Stipulation.

Local Rules of the United States District Court for the Southern District of New York and any and all other applicable laws have been met as to the "Settlement Class" defined below, in that:

- a. The Settlement Class is cohesive and well defined;
- b. The members of the Settlement Class are reasonably ascertainable from records kept by Defendants, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable;
- c. Based on allegations in the Complaint, there are one or more questions of fact and law common to the Settlement Class;
- d. Based on allegations in the Complaint, the claims of the Plaintiff are typical of the claims of the Settlement Class;
- e. Plaintiff will fairly and adequately protect the interests of the Settlement Class in that: (i) the interests of Plaintiff and the nature of her alleged claims are consistent with those of the members of the Settlement Class; (ii) there appear to be no conflicts between Plaintiff and the Settlement Class; and (iii) Plaintiff and the members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting complicated class actions; and
- f. Common issues of law and fact predominate over individual issues and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

2. Based on the findings set out in paragraph 1 above, the Court preliminarily certifies a class (the "Settlement Class") for settlement purposes only under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), consisting of two subclasses:

"Lost Hours and Benefits Sub-Class" means all persons currently or formerly employed by Dave & Buster's as hourly wage, full-time employees, excluding

employees in Hawaii, who were enrolled in full-time healthcare insurance benefits under the Dave & Buster's Plan at any point from February 1, 2013 through the Preliminary Approval Date, and whose full-time hours were reduced to part-time by Dave & Buster's at any time between May 8, 2013 and the Preliminary Approval Date, which reductions resulted in the loss of wages and the loss of full-time healthcare insurance benefits under the Dave & Buster's Plan, except that employees who were promoted to management or a position at headquarters at any point during the Class Period are excluded from this sub-class; and

"Lost Hours and Eligibility Sub-Class" means all persons currently or formerly employed by Dave & Buster's as hourly wage, full-time employees, excluding employees in Hawaii, at any point from February 1, 2013 through the Preliminary Approval Date, and whose full-time hours were reduced to part-time by Dave & Buster's at any time between May 8, 2013 and the Preliminary Approval Date, which reductions resulted in the loss of wages and the loss of eligibility for full-time healthcare insurance benefits under the Dave & Buster's Plan, except that employees who were promoted to management or a position at headquarters at any point during the Class Period are excluded from this sub-class.

The two sub-classes together comprise the Settlement Class. A member of the Settlement Class may be a member of the Lost Hours and Benefits Sub-Class or the Lost Hours and Eligibility Sub-Class, but not both. Any persons who exclude themselves from the Settlement Class during the Notice Period as directed in the Stipulation shall not be a member thereof.

3. The Court preliminarily appoints Plaintiff Maria de Lourdes Parra Marin as Class Representative for the Settlement Class and appoints Abbey Spanier, LLP, Conover Law Offices and Frumkin & Hunter LLP as Class Counsel.

4. Preliminary Findings Concerning Proposed Settlement. The Court preliminarily finds that the Proposed Settlement should be approved as: (i) the result of serious, extensive arm's-length and non-collusive negotiations; (ii) fair, reasonable, and adequate; (iii) having no obvious deficiencies; (iv) not improperly granting preferential treatment to Plaintiff or segments of the Settlement Class; (v) falling within the range of possible approval; and (vi) warranting

notice to Settlement Class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the Proposed Settlement.

30 5. Final Approval Hearing. A hearing is scheduled for *CH Room 14D* (

2 pm, May 9, 2019 ~~2019~~ (the "Final Approval Hearing") to determine,

among other things:

- a. Whether the Settlement should be finally approved as fair, reasonable, and adequate;
- b. Whether the action should be dismissed with prejudice pursuant to the terms of the Stipulation;
- c. Whether the Notice: (i) constituted appropriate notice; and (ii) met all applicable requirements of the Federal Rules of Civil Procedure and any and all other applicable laws;
- d. Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Stipulation;
- e. Whether the allocation formula as set forth in Exhibit C to the Stipulation should be approved; and
- f. Whether the application for Class Counsel Attorneys' Fees and Lawsuit Costs and Plaintiff's Incentive Award filed by Class Counsel should be approved.

6. Notices. A proposed form of Notice is attached to the Stipulation as Exhibit A. The Court finds that the form fairly and adequately: (i) describes the terms and effect of the Stipulation and of the Settlement; (ii) notifies the Settlement Class concerning the proposed allocation formula and distribution; (iii) notifies the Settlement Class that Class Counsel will seek Attorneys' Fees and Lawsuit Costs not to exceed thirty-three percent (33%) of the

Settlement Amount; (iv) gives notice to the Settlement Class of the time and place of the Final Approval Hearing; and (v) describes how the recipients of the Notice may exclude themselves from the Settlement or object to any aspect thereof. The Court directs that, consistent with the Stipulation, the Settlement Administrator:

- No later than thirty (30) calendar days after entry of this Order, cause the Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties to be mailed, by first-class mail, postage prepaid, to each Class Member that had been identified.
- At or before the Final Approval Hearing, the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

7. Exclusion Requests. Members of the Settlement Class may exclude themselves

from the Settlement Class and from participation in the proceeds of the Proposed Settlement by submitting a timely Request for Exclusion to the Settlement Administrator as directed in the Notice. Any member of the Settlement Class who does not provide the Settlement Administrator with a timely Request for Exclusion shall be bound by all the terms and conditions of the Proposed Settlement, including the release of identified claims, whether or not he or she received or cashes his or her Settlement Check.

8. Objections to Settlement. Any member of the Settlement Class who wishes to

object to the fairness, reasonableness or adequacy of the Settlement, to the plan of allocation and distribution as set forth in Exhibit C to the Stipulation, to any term of the Stipulation or to Class Counsel's application for Attorneys' Fees and Lawsuit Costs may file an Objection by following the instructions in the Notice. The addresses for service on counsel are as follows:

Plaintiff's Counsel/Class Counsel:

Karin E. Fisch ABBEY SPANIER, LLP 212 East 39th Street New York, New York 10016	William D. Frumkin Elizabeth E. Hunter FRUMKIN & HUNTER LLP 1025 Westchester Avenue, Suite 309 White Plains, New York 10604
Bradford D. Conover, Esq. Molly Smithsimon, Esq. CONOVER LAW OFFICES 345 Seventh Avenue, 21 st Floor New York, New York 10001	

Defendants' Counsel:

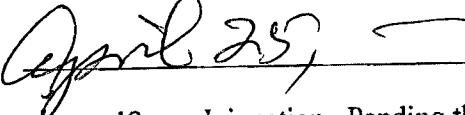
Jack Baughman, Esq.
Maria H. Keane, Esq.
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064

Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph and the Notice shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Proposed Settlement, and any untimely objection shall be barred.

9. Appearance at Fairness Hearing. Any objector who files and serves a timely, written objection may appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must so state in their objection and must state the specific reason for each objection, including any legal support that the objector wishes to bring to the Court's attention, and copies of any documentary evidence. Any objector who does not timely file and serve a timely

objection and state their of intention to appear shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

10. Service of Papers. If it appears that any objections were not properly served, the Parties shall furnish each other's counsel with copies of any and all such objections that come into their possession promptly after learning of the deficiency in service. Class Counsel shall file all objections with the Court prior to the Final Approval Hearing

11. Fee Petition. Class Counsel shall file an application Attorneys' Fees and Lawsuit Costs no later than seven (7) calendar days prior to the Fairness Hearing, *i.e.*,  

12. Injunction. Pending the final determination of the fairness, reasonableness and adequacy of the Proposed Settlement, all members of the Settlement Class are enjoined from instituting or commencing any action against Released Parties based on the Released Claims, and all proceedings in this action, except those related to approval of the Proposed Settlement, are stayed.

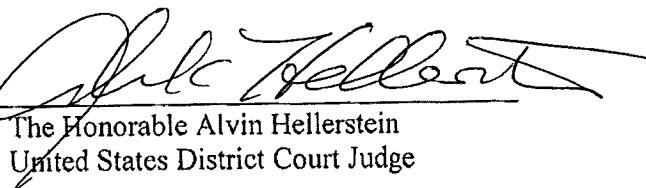
13. Termination of Settlement. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of execution of the Stipulation, if the Settlement is terminated in accordance with the Stipulation or does not receive final approval. In such event, Section 22 of the Stipulation shall govern the rights of the Parties.

14. Use of Order. This Order is entered in compromise of disputed claims and does not reflect admissions of liability of any kind, whether legal or factual by the Released Parties. The Released Parties specifically deny any liability or wrongdoing. Plaintiff specifically believes she would have a good chance of prevailing in the event of trial, but settle in recognition

of the inherent uncertainty of litigation. Neither the fact nor the terms of this Order shall be construed or used as an admission, concession, or declaration by or against Released Parties of any fault, wrongdoing, breach, or liability or as a waiver by any Party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by Released Parties to class certification in the event that the Stipulation is terminated or not given final approval.

15. Continuance of Hearing. The Court may in its discretion continue the Final Approval Hearing without further written notice.

Dated this 7th day of December, 2018.



The Honorable Alvin Hellerstein
United States District Court Judge