



# GRANTED WITH MODIFICATIONS

IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE  
EMPLOYEES' RETIREMENT SYSTEM, on  
behalf of itself and all other similarly situated  
shareholders of Landry's Restaurants, Inc., and  
derivatively on behalf of nominal defendant  
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.  
SCHEINTHAL, KENNETH BRIMMER,  
MICHAEL S. CHADWICK, MICHAEL  
RICHMOND, JOE MAX TAYLOR, FERTITTA  
HOLDINGS, INC., FERTITTA ACQUISITION  
CO., RICHARD LIEM, FERTITTA GROUP,  
INC. and FERTITTA MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

## **SCHEDULING ORDER WITH RESPECT TO THE REMAINING CLAIMS SETTLEMENT AND AMENDMENT TO SCHEDULING ORDER DATED JUNE 28, 2010**

The Parties have previously made application, pursuant to Delaware Court of Chancery Rules 23 and 23.1, for an Order approving the proposed partial settlement (the "Partial Settlement") of the above-captioned action (the "Action") in accordance with a Stipulation of Partial Settlement dated June 22, 2010 (the "Partial Settlement Stipulation"). On June 28, 2010, this Court entered a Scheduling Order (the "Partial Settlement Scheduling Order") in connection with the Partial Settlement. The Partial Settlement Scheduling Order is amended as set forth in paragraph 8 hereof.

Now the Parties seek an Order approving the proposed settlement of the remaining claims in the Action (the “Remaining Claims Settlement”) in accordance with a Stipulation of Settlement of Remaining Claims (the “Remaining Claims Stipulation”), which (along with the defined terms therein) is incorporated herein by reference and which, together with the Exhibits thereto, sets forth the terms and conditions for the proposed settlement of the Action and for an Order and Final Judgment to fully and finally compromise, resolve, discharge, settle, and dismiss with prejudice all remaining claims asserted or that could have been asserted against Defendants in the Second Amended Verified Class Action and Derivative Complaint filed in the Action on May 21, 2010, and every prior version of the Complaint (collectively, the “Complaint”) that were not settled and released pursuant to the Partial Settlement; and the Court having read and considered the Remaining Claims Stipulation and the Exhibits thereto; all Parties having consented to the entry of this Order; and incorporating the Partial Settlement Scheduling Order entered by this Court on June 28, 2010;

**IT IS HEREBY ORDERED** this day of \_\_\_\_\_, 2010, that:

1. The Court preliminarily approves the Remaining Claims Settlement on the terms set forth in the Remaining Claims Stipulation, subject to further consideration at the Settlement Hearing referred to in paragraph 4 below.

2. For purposes of the Remaining Claims Settlement only, and preliminarily for purposes of this Order, the Action shall be maintained and proceed as a class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on behalf of the following settlement subclass (the “2008 Transaction Subclass”):

All persons and entities who held shares of Landry’s Restaurants, Inc.’s (“Landry’s”) common stock at any point between September 17, 2008 and January 11, 2009, inclusive, excluding Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry’s and the

Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

3. For purposes of the Remaining Claims Settlement only, Plaintiff Louisiana Municipal Police Employees' Retirement System is preliminarily appointed as Class Representative, and Plaintiff's Counsel, Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A., are preliminarily appointed as Class Counsel pursuant to Delaware Court of Chancery Rule 23.

4. A hearing (the "Settlement Hearing") shall be held on \_\_\_\_\_, 2010, at \_\_\_\_\_.m. in the Court of Chancery in the New Castle Courthouse, 500 North King Street, Wilmington, Delaware, 19801, to: (a) determine whether the proposed Remaining Claims Settlement, on the terms and conditions provided for in the Remaining Claims Stipulation, is fair, reasonable and adequate and in the best interests of Plaintiff and the 2008 Transaction Subclass and should be approved by the Court; (b) determine whether the preliminary class certification described in this Order shall be made final; (c) determine whether Plaintiff and Plaintiff's Counsel have adequately represented the 2008 Transaction Subclass; (d) determine whether the Court should enter an Order and Final Judgment as provided in the Remaining Claims Stipulation dismissing with prejudice the claims asserted or that could have been asserted against Defendants in the Complaint that were not settled and released pursuant to the Partial Settlement and releasing the Settled Claims and Settled Defendants' Claims; (e) determine whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; (f) hear the application by Plaintiff's Counsel for an award of attorneys' fees and reimbursement of litigation expenses in connection with the Remaining Claims Settlement; and (g) rule on such other matters as the Court may deem appropriate.

5. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the hearing on Plaintiff's Counsel's application for an award of attorneys' fees and expenses, without further notice of any kind to the 2008 Transaction Subclass other than by oral announcement at the Settlement Hearing or any adjournment thereof.

6. The Court reserves the right to approve the Remaining Claims Settlement and/or the Plan of Allocation at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties to the Remaining Claims Stipulation and without further notice to the 2008 Transaction Subclass. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Settled Claims against the Released Parties and the Settled Defendants' Claims against Plaintiff, the 2008 Transaction Subclass Members and their counsel with prejudice regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

7. The Court approves, in form and content, the Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), the Proof of Claim form (the "Claim Form"), and the Summary Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice"), substantially in the forms attached as Exhibits B, C and D to the Remaining Claims Stipulation, respectively. With respect to the Remaining Claims Settlement, (a) within ten (10) business days after entry of the Scheduling Order, Landry's or its successor(s)-in-interest shall publish Summary Notice, once in the *Investor's Business Daily* and over the PR Newswire, and (b) Landry's or its successor(s)-in-interest shall mail the Notice and the Claim Form to current Landry's stockholders ("Current Stockholders"). Landry's or its

successor(s)-in-interest may mail the Notice and Claim Form to Current Stockholders along with its proxy statement in connection with the sale/merger of the Company to Fertitta and/or a third party, but in no event shall such mailing take place less than sixty (60) calendar days before the Settlement Hearing. No less than sixty (60) calendar days prior to the Settlement Hearing, Plaintiff shall cause the Notice and the Claim Form to be sent to the remaining members of the 2008 Transaction Subclass (the “Non-Current Stockholders”) that can reasonably be identified. All costs of notice and administration of the Remaining Claims Settlement shall be paid in accordance with paragraphs 16 and 17 of the Remaining Claims Stipulation.

8. By the terms of the Partial Settlement Scheduling Order, Landry’s or its successor(s)-in-interest was ordered to (a) publish a summary notice once in the *Investor’s Business Daily* and over the PR Newswire, and (b) mail a notice to all Current Stockholders, which mailing may take place by proxy statement, provided that such mailing take place less than sixty (60) calendar days before the Settlement Hearing. The Partial Settlement Scheduling Order is hereby amended to permit Landry’s or its successor(s)-in-interest to provide notice with respect to the Partial Settlement pursuant to the Notice and Summary Notice attached as Exhibits B and D to the Remaining Claims Stipulation, provided that Landry’s or its successor(s)-in-interest publishes the Summary Notice within ten (10) business days after entry of this Scheduling Order and mails the Notice to all Current Stockholders no less than sixty (60) calendar days before the Settlement Hearing. All costs of notice of the Partial Settlement shall be paid in accordance with paragraph 8 of the Partial Settlement Stipulation and paragraph 6 of the Partial Settlement Scheduling Order.

9. The form and method of notice specified in this Order is the best notice practicable under the circumstances and shall constitute due and sufficient notice of the

Settlement Hearing to all persons entitled to receive such notice, and fully satisfies the requirement of due process, Delaware Court of Chancery Rule 23 and applicable law. Prior to the date of the Settlement Hearing directed herein, the parties shall file with the Court proof, by affidavit or declaration, of the publication and mailing of notice as directed herein.

10. The Court approves the appointment of The Garden City Group, Inc. as the Claims Administrator. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased Landry's common stock during the 2008 Transaction Subclass Period as record owners but not as beneficial owners. As set forth in the Notice, such nominees who hold or held Landry's common stock for beneficial owners who are 2008 Transaction Subclass Members are directed to send a copy of the Notice and the Claim Form to the beneficial owner of the shares postmarked no more than five (5) business days from the date of receipt of the Notice, or to provide the names and addresses of such persons no later than five (5) business days from the date of receipt of the Notice to the Claims Administrator at the address specified in the Notice, who shall promptly send a copy of the Notice and Claim Form to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund. Landry's or its successor(s)-in-interest are responsible for providing, and paying for the costs of providing, notice to nominee owners who hold or held Landry's common stock of the benefit of current Landry's shareholders and 2009 Transaction Subclass Members (as defined in the Partial Settlement Stipulation and Partial Settlement

Scheduling Order) in accordance with paragraph 8 of the Partial Settlement Stipulation and paragraph 6 of the Partial Settlement Scheduling Order.

11. Any member of the 2008 Transaction Subclass who objects to the Remaining Claims Settlement and/or the Order and Final Judgment to be entered by the Court, the Plan of Allocation and/or Plaintiff's Counsel's fee and expense application with respect to the Remaining Claims Settlement, or otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; *provided, however*, that no member of the 2008 Transaction Subclass may be heard and no papers or briefs submitted by or on behalf of any member of the 2008 Transaction Subclass be received and considered, except by Order of the Court for good cause shown, unless, no later than ten (10) business days prior to the Settlement Hearing, copies of: (a) a written notice of intention to appear, identifying the name, address, and telephone number of the objector and, if represented, their counsel; (b) a written detailed statement of such person's specific objections to any matter before the Court; (c) proof of membership in the 2008 Transaction Subclass, including a listing of all transactions in Landry's common stock during the 2008 Transaction Subclass; (d) the grounds for such objections and any reasons for such person's desiring to appear and be heard; and (e) all documents and writings such person desires the Court to consider, shall be served by hand or overnight mail upon each of the following counsel:

Mark Lebovitch  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019

Mary S. Thomas  
GRANT & EISENHOFER P.A.  
1201 N. Market St.  
Wilmington, DE 19801

*Plaintiff's Counsel*

David J. Teklits  
MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP  
1201 North Market Street, 18th Floor  
P.O. Box 1347  
Wilmington, DE 19899

Gerard G. Pecht  
FULBRIGHT & JAWORSKI L.L.P.  
1301 McKinney, Suite 5100  
Houston, TX 77010

*Counsel for Defendants Kenneth Brimmer, Michael S.  
Chadwick, Michael Richmond and Joe Max Taylor*

Thomas A. Beck  
Daniel A. Dreisbach  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 N. Market Street  
Wilmington, DE 19801

David D. Sterling  
Danny David  
BAKER BOTTS L.L.P.  
One Shell Plaza  
910 Louisiana Street  
Houston, TX 77002

*Counsel for Defendants Tilman J. Fertitta, Steven L.  
Scheinthal, Fertitta Holdings, Inc., Fertitta Acquisition  
Co., Richard Liem, Fertitta Group, Inc. and Fertitta  
Merger Co.*

Bruce L. Silverstein  
Elena C. Norman  
YOUNG CONAWAY STARGATT & TAYLOR LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801

Odean L. Volker  
HAYNES AND BOONE, LLP  
One Houston Center  
1221 McKinney, Suite 2100  
Houston, TX 77010

*Counsel for Nominal Defendant Landry's  
Restaurants Inc.*

at the same time these papers must be filed with the Register in Chancery, Court of Chancery, 500 North King Street, Wilmington, DE 19801. Unless the Court otherwise directs, no member of the 2008 Transaction Subclass shall be entitled to object to the Settlement, or to the Order and Final Judgment to be entered herein, or to the Plan of Allocation or award of attorneys' fees and expenses to Plaintiff's Counsel, or otherwise to be heard, except by serving and filing written objections as described above. Any person who fails to object in the manner provided above shall be deemed to have waived such objection and shall forever be barred from making any such objection in this Action or in any other action or proceeding.

12. In order to be entitled to participate in the Remaining Claims Settlement, in the event the Remaining Claims Settlement is effected in accordance with all of the terms and conditions set forth in the Remaining Claims Stipulation, each 2008 Transaction Subclass Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Claim Form, substantially in the form attached as Exhibit C to the Remaining Claims Stipulation, must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than 120 calendar days from

the date set for the mailing of Notice. Such deadline may be further extended by Court Order. Each Claim Form shall be deemed to have been submitted when mailed (if properly addressed and mailed by first-class or overnight U.S. Mail, postage prepaid) provided such Claim Form is actually received prior to the motion for an Order of the Court approving distribution of the Net Settlement Fund. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice.

(b) The Claim Form submitted by each 2008 Transaction Subclass Member Class Member must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Plaintiff's Counsel or the Claims Administrator; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of his or her current authority to act on behalf of the 2008 Transaction Subclass Member must be included with the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein, and must be signed under penalty of perjury.

(c) As part of the Claim Form, each 2008 Transaction Subclass Member shall submit to the jurisdiction of the Court with respect to the Claim Form submitted

13. All funds held in the Escrow Account shall be deemed and considered to be *in custodia legis* and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order of the Court.

14. If the Court approves the Remaining Claims Settlement provided for in the Remaining Claims Stipulation following the Settlement Hearing, an Order and Final Judgment shall be entered substantially in the form attached as Exhibit E to the Remaining Claims Stipulation.

15. In the event this Remaining Claims Settlement is terminated, the Remaining Claims Settlement shall be without prejudice, and none of its terms shall be effective or enforceable and the fact of the Remaining Claims Settlement shall not be admissible in any trial of this Action, and the Parties shall be deemed to have reverted to their respective status in this Action immediately prior to July 7, 2010 and, except as otherwise expressly provided, the Parties shall proceed in all respects as if the Remaining Claims Stipulation and any related orders had not been entered.

16. The administration of the proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any Proof of Claim or right of any person or entity to participate in the distribution of the Net Settlement Fund shall be under the authority of this Court.

17. Pending final determination by the Court of whether the Remaining Claims Settlement should be approved, Plaintiff and the 2008 Transaction Subclass are barred and enjoined from instituting, commencing or prosecuting any Settled Claims as against the Released Parties.

18. The Court retains jurisdiction over the Action to consider all further applications arising out of or connected with the Remaining Claims Settlement.

---

Vice Chancellor

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** J Travis Laster

**File & Serve**

**Transaction ID:** 32306573

**Current Date:** Jul 26, 2010

**Case Number:** 4339-VCL

**Case Name:** CONF ORD ON DISC Louisiana Municipal Police Employees Retirement System vs  
Tilman J Fertitta

**Court Authorizer:** J Travis Laster

---

**Court Authorizer**

**Comments:**

The Settlement Hearing will be held on Wednesday, October 6, 2010 beginning at 10:00 a.m.

/s/ **Judge J Travis Laster**