

SHORT FORM ORDER

Index No. 631543/2024

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

PRESENT:

HON. CHRISTOPHER MODELEWSKI
Justice of the Supreme Court

MOTION DATE: 07/02/2025 (003)
MOTION DATE: 07/02/2025 (004)
ADJ. DATE: 07/07/2025 (003 & 004)
Mot. Seq. #003-MOTD
Mot. Seq. #004-MOTD

ORDER

-----X

JOSHUA HOMER, individually and on behalf of
all others similarly situated,

Plaintiff,

-against-

HY ATTRACTIONS MANAGER, LLC,

Defendant.

-----X

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Before the Court is the motion of plaintiffs' counsel for final approval of Class Action Settlement, Service Award to the named plaintiff and award of attorney's fees and costs to the class counsel.

The antecedents hereto are set out in the prior order of the Court dated April 10, 2025.

The named plaintiff is a resident of Suffolk County and a purchaser of a ticket or tickets to the entertainment venue operated by the defendant.

Upon the e-filed documents in this matter numbered 1 to 55, read and considered on this unopposed application together with colloquy between counsel and the Court on the record before the Court on July 2, 2025; it is hereby

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ORDERED, ADJUDGED AND DECREED:

Final Certification of the Settlement Class

The Court certifies the following class under Article 9 of the CPLR for settlement purposes only (“Settlement Class”).

All persons who purchased admission tickets to the defendant’s entertainment venue between February 16, 2024 and July 6, 2024.

Approval of the Settlement Agreement

The Court hereby grants the Motion for Final Approval of the Class Action Settlement, Service Award to Named Plaintiff, and Award of Class Counsel Attorneys’ Fees and Costs and finally approves the settlement, as set forth in the Settlement Agreement, of \$250,000.00.

Civil Practice Law and Rules Section 908 requires judicial approval for any compromise of claims brought on a class basis. In determining whether to approve a class action settlement, “the Supreme Court must further address whether the proposed settlement is fair its adequate, reasonable and in the best interests of the class members” (*Klein v. Robert’s Am. Gourmet Food, Inc.*, 28 AD3d 63, 73, 808 NYS2d 766, 774 [2d Dept 2006]). Respecting an action which primarily seeks the recovery of money damages, “determining the adequacy of a proposed settlement generally involves balancing the value of that settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation.” (*id.*). All of these factors weigh in favor of approving the settlement in this matter.

The claims in this case arise from an undisclosed fee included in the purchase of tickets to the defendant’s entertainment venue. In reaching the settlement, Class Counsel took into account the risks in the event of trial and appeal by defendant. The settlement negotiations were conducted at arm’s length between parties represented by counsel experienced in class action law, and they have produced a result that Class Counsel believes to be in the best interests of the Class in light of the costs and risks of continued litigation (*Wal-Mart Stores, Inc. v Visa U.S.A., Inc.* 396 F3d 96, 116 [2nd Cir. 2005][internal quotation omitted]). Additionally defendant could continue to contest plaintiff’s claims if this action does not settle. In light of the strengths and weaknesses of the case, the settlement falls within the range of reasonableness because it achieves a significant benefit for plaintiff and the Settlement Class Members, giving both certainty and repose where continued litigation could yield a less attractive result. While there is a possibility that the Class could recover more money, including interest, after trial, the Settlement provides the significant benefit of a guaranteed and certain payout to Settlement Class Members, rather than “speculative payment of hypothetically larger amount years down the road” (*Gilliam v Addicts Rehab. Ctr., Fund*, 05 Civ. 3452 (RLE), 2008 US Dist. LEXIS 23016, 2008 WL 782596, at *5 [SDNY 2008] quoting *Teachers’ Ret. Sys. of La v A.C.L.N., Ltd.*, 01 Civ. 11814 (MP), 2004 US Dist. LEXIS 8608, 2004 WL 108726, at *5 [SDNY 1004]).

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Service Award to the Class Representative

The Court finds reasonable the service award of \$5,000.00 to Class Representative, Joshua Homer, given the contributions he made to advance the prosecution and resolution of the lawsuit. This award shall be paid from the settlement fund.

A Court may grant service awards in a class action. Such awards “reward the named plaintiffs for the effort and inconvenience of consulting with counsel over the many years [a] case was active and for participating in discovery...” (*Cox v Microsoft Corp.*, 26 Misc3d 1220[A], 907 NYS2d 436 [Sup Ct New York County 2007]). Service awards “are particularly appropriate in the employment context...[where] the plaintiff is often a former or current employee of the defendant, and thus...he has, for the benefit of the class as a whole, undertaken the risks of adverse actions by employer or co-workers” (*Frank v Eastman Kodak Co.*, 228 F.R.D. 174, 187 [WDNY 2005]).

Plaintiff expended time and effort to assist Class Counsel with the case. As such, his actions exemplify the very reason service fees are awarded (*Frank v Eastman Kodak Co.*, 228 F.R.D. at 187) (recognizing the important role that plaintiffs play as the “primary source of information concerning the claim,” including by responding to counsel’s questions and reviewing documents).

The service award totaling \$5,000.00 for plaintiff is reasonable for the services plaintiff provided, and is well within the range awarded by courts in similar matters (*see Capsolas v Pasta Resources Inc.*, 10-cv-5595 (RLE), 2012 US Dist. LEXIS 144651, 2012 WL 4760910, at *9 [SDNY 2012]; *Lovaglio v W&E Hospitality, Inc.*, 10 Civ 7351 (LLS), 2012 US Dist. LEXIS 94077, 2012 WL 2775019, at 4* [SDNY 2012]; *Sewell v Bovis Lend Lease, Inc.*, 09 Civ. 6548 (RLE), 2012 US Dist. LEXIS 53556, 2012 WL 1320124 at *13 [SDNY 2012]; *Matheson v T-Bone Restaurant, LLC*, 09 Civ. 4214 (DAB), 2011 US Dist. LEXIS 143773, 2011 WL 6268216, at *9 [SDNY 2011]; *Willix v Healthfirst, Inc.*, 07 Civ. 1143 (RER), 2011 US Dist. LEXIS 21102, 2011 WL 754862, at *7 [EDNY 2011]).

Award of Fees and Costs to Class Counsel

On April 10, 2025, the Court appointed Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. as Class Counsel because they did worthwhile work identifying, investigating, litigating, and settling plaintiff’s and the Settlement Class Members’ claims, they have experience prosecuting and settling such actions, and they appear well-versed class action law. The work of Class Counsel in litigating and settling this case demonstrates commitment to the class and to representing the best interests of the class. The Court acknowledges that Class Counsel proceeded on behalf of the class on a contingent fee basis; which often has the salutary effect of providing individuals and groups of limited means access to the civil justice system otherwise beyond their reach. The request for a one-third contingent fee was not opposed by counsel to the defendant, and the Court is aware that it is not uncommon for such percentage to be awarded in class action lawsuits (*see In re PPD AI Group Inc. Securities Litigation*, 18-CV-6716 (TAM), 2022 WL 198491 [EDNY 2022]).

The CPLR authorizes a court to grant attorneys’ fees to class counsel who obtain a judgment on behalf of the class: “If a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys’ fees to the representative of the class based on the reasonable value of legal services rendered...” (CPLR 909). As a threshold matter, it is incumbent on the attorney seeking payment of a legal fee to prove the reasonableness of the fee (*Klein v Robert’s Am. Gourmet Food, Inc.*, 28 AD3d 63, 808 NYS2d 766 [2d Dept 2006]).

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On the one hand, the Court recognizes that its function on fee applications is not to parrot “green-eyeshade accountants” in an effort to achieve “auditing perfection” (*Fox v Vice*, 563 US 826, 838 [2011]). However, the Court must not merely rubber-stamp an attorney fee request without making inquiry into the conduct of the work. As was set forth with eloquence by Justice Thomas Whelan in *RMP Capital Capital Corp. v Victory Jet, LLC*, 40 Misc3d 1243(A), 977 NYS2d 670 (Sup Ct Suffolk County 2013) aff’d as modified, 139 AD3d 836, 32 NYS3d 231 (2d Dept 2016), “[i]t has long been recognized that courts have traditional authority to supervise the charging of fees for professional services under the court’s inherent and statutory power to regulate the practice of law” (see also *Hom v Hom* 210 AD2d 296, 297, 622 NYS2d 282 [2d Dept 1994]; *Matter of Greenwald v Scheinman*, 94 AD2d 842, 463 NYS2d 303 [3d Dept 1983]).

In his affirmation of July 16, 2025, Mr. Fraietta set out numerous instances of successful prosecutions of similar class action lawsuits. He also attached numerous articles about hourly billing charged by large law firms with New York City offices. A review of “B&F hourly rates as of May 1, 2025” reveals that the rates charged by class counsel are higher than prevailing rates in Suffolk County.

A court may calculate reasonable attorneys’ fees by either the lodestar method (multiplying the hours reasonably billed by a reasonable hourly rate) or based on a percentage of the recovery (see *Fiala v Metropolitan Life Ins. Co., Inc.*, 27 Misc3d 599, 899 NYS2d 531, 540 [Sup Ct New York County 2010]). Where a settlement establishes a common fund, the percentage method is often preferable because “the lodestar method has the potential to lead to inefficiency and resistance to expeditious settlement because it gives attorneys an incentive to raise their fees by billing more hours” (*Cox v Microsoft Corp.*, 26 Misc3d 1220[A], 907 NYS2d 436 [Sup Ct New York County 2007]).

“Common fund recoveries are contingent on a successful litigation outcome” (*Guaman v Anja-Bar NYC*, 12 Civ. 2987 (DF), 2013 US Dist. LEXIS 16208, 2013 WL 445896, at *7 [SDNY 2013]). Such “contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining to representation...and transfer a significant portion of the risk of loss to the attorneys taking a case. Access to the courts would be difficult to achieve without compensating attorneys for that risk” (*deMunecas v Bold Food LLC*, 09 Civ. 00440 (DAB), 2010 US Dist. LEXIS 87644, 2010 WL 3322580, at *8 [SDNY 2010]) (internal quotation marks and citations omitted). Many additional litigants, “cannot afford to retain counsel at fixed hourly rates...yet they are willing to pay a portion of any recovery they may receive in return for successful representation” (*id.*)(citation omitted). In the matter before the Court, it is doubtful that the Class Representative, Joshua Homer, was positioned to negotiate a contingent fee lower than the one-third contingent fee proposed by Class Counsel.

Regardless of the method used to determine reasonable attorneys’ fees, a court should consider the following factors: “time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer’s experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved” (*In re Freeman’s Estate*, 34 NY2d 1, 355 NYS2d 336 [1974]). Of the numerous factors to be considered by the Court, it is appropriate to focus on “the difficulty of the questions involved” and “the skill required to handle the problems presented” in the matter at bar. On the difficulty of the questions involved, and the skill required to handle the problems presented the instant matter concerns the identification of a modest hidden fee which was collected in violation of a local law over a short period of time. Under such circumstances, the Court grants an attorney fee of \$62,375.00, which is the twenty-five (25%) percent of the settlement fund, in addition to fees and disbursements actually expended of \$590.22.

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The attorneys' fees for Class Counsel and fees and costs shall be paid from the Settlement Fund.

Award of Fees to Claims Administrator

The Court has reviewed the affirmation of Cameron R. Azari, Esq., an officer of Epiq Class Action Claim Solutions, Inc., ("Epiq"). The affirmation sets out the *bona fides* of Epiq in the realm of class action notice plans and details the regime constructed to notify class members and to effectuate delivery of twelve dollar payments to members of the Class who were charged the hidden ticket fee. While the Court recognizes the value and import of Epiq's efforts in this regard, the fee requested strikes the Court as excessive. That observation was shared with the attorney who appeared at the Fairness Hearing on July 2, 2025, without any substantive objection. The Court determines that appropriate and reasonable compensation for Epiq, under all of the premises, is \$50,000.

Settlement Procedure

The "Final Effective Date" means the first date after all of the following have occurred: (1) the Court has entered a Final Approval Order, and (2) the judgment and the rulings on the motion for Final Approval Order have become final, meaning the time periods for seeking rehearing, reconsideration, appellate review and/or an extension of time for seeking appellate review have expired and there have been no such actions sought, or if rehearing, reconsideration, appellate review, and/or an extension of time for seeking appellate review is sought, thirty (30) days after any and all avenues for such review have been exhausted and there have been no modification of the judgment.

Within thirty (30) days of the Final Effective Date, the Claims Administrator shall pay the remainder of the settlement fund (funds remaining after deducting the attorney's fees and expenses, service award to Joshua Homer, and the agreed upon and approved Claims Administrator's fees) to Authorized Claimants in accord with the allocation plan as set forth in the Settlement Agreement.

Within thirty (30) days of the Final Effective Date, the Claims Administrator shall pay the service award fee to Joshua Homer.

Within thirty (30) days of the Final Effective Date, the Claims Administrator shall pay Class Counsel attorneys' fees in the sum of \$ 62,375.00 and reimburse Class Counsel for costs and expenses of 590.22 from the Settlement Fund.

Within seven (7) days of the Final Effective Date, the Claims Administrator shall receive a claims administration fee of \$5,000.00 from the Settlement Fund.

The Court retains jurisdiction over the action for the purpose of enforcing the Settlement Agreement and overseeing the distribution of settlement funds. The parties shall abide by all terms of the Settlement Agreement, which are incorporated herein, and this Order.

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This litigation shall be dismissed in its entirety with prejudice and all members of the Settlement Class who have not excluded themselves from the settlement shall be conclusively deemed to have released and discharged defendant from, and shall permanently enjoined from, directly or indirectly, pursuing and/or seeking to reopen, any and all claims that have been released pursuant to this settlement.

The foregoing constitutes the decision and Order of the Court.

Dated: September 5, 2025



HON. CHRISTOPHER MODELEWSKI, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION