

Reeves v La Pecora Bianca, Inc.
2019 NY Slip Op 33434(U)
November 20, 2019
Supreme Court, New York County
Docket Number: 151153/2018
Judge: Robert D. Kalish
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM

Justice

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INDEX NO. 151153/2018

STEVEN REEVES and KRISTEN BOOTH, on
behalf of themselves and other similarly situated,

MOTION DATE 11/06/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

LA PECORA BIANCA, INC., LA PECORA
BIANCA HOLDINGS, LLC, LPB1 LLC and MARK
BARAK, in his individual and professional capacities,

**DECISION + ORDER ON
MOTION**

Defendants.

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NYSCEF Doc Nos. 37-47 were read on this motion for preliminary approval.

Motion pursuant to CPLR 901 and 902 for preliminary approval granted.

On November 6, 2019, this matter came before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Approval of Proposed Notice of Settlement (“Motion for Preliminary Approval”). Defendants did not oppose Plaintiffs’ Motion for Preliminary Approval.

The Court has considered the Plaintiffs’ request for approval of a class pursuant to CPLR 901 and 902 for settlement purposes and the Class Action Settlement Agreement and Release (“Settlement Agreement”), filed in its final form on June 28, 2019 (NYSCEF Doc No. 39), and the Declaration of Innessa M. Huot filed on the same day (NYSCEF Doc No. 38), and hereby finds and Orders as follows:

A. Preliminary Approval of Settlement

1. Unless otherwise defined herein, all terms used in this order (the “Preliminary Approval Order”) will have the same meaning as defined in the Settlement Agreement.

2. The Court finds on a preliminary basis that the Settlement memorialized in the Settlement Agreement, filed with the Court, is fair, reasonable and adequate, and therefore, meets the requirements for Preliminary Approval such that notice to the class is appropriate.

3. The Court finds that the Settlement Agreement is the result of extensive, arms'-length negotiations by counsel well-versed in the prosecution of wage-and-hour class and collective actions.

4. The Court grants Plaintiffs' Motion for Preliminary Approval.

B. Conditional Certification of the Proposed Settlement Class for Settlement Purposes

5. Preliminary Approval of the Settlement, class certification for settlement purposes, and appointment of class counsel have several practical purposes, including avoiding the costs of litigating class status while facilitating a global settlement, ensuring all class members are notified of the terms of the proposed Settlement Agreement, and setting the date and time of the Final Approval Hearing.

6. Pursuant to CPLR 901 and 902, the Court conditionally certifies, for settlement purposes only, a Settlement Class consisting of all individuals who have been employed by Defendants in any position at any time from August 1, 2015, to January 23, 2019.

7. The Court appoints Plaintiffs Steven Reeves and Kristen Booth to represent the Settlement Class, for settlement purposes.

8. Plaintiffs meet all the requirements for class certification under CPLR 901 and 902, for settlement purposes.

C. Appointment of Plaintiffs' Counsel as Class Counsel

9. For settlement purposes only, the Court appoints Faruqi & Faruqi, LLP as Class Counsel because they meet all the requirements under CPLR 901 (a) (4).

10. Class Counsel did substantial work identifying, investigating, prosecuting, and settling Plaintiffs' and the Settlement Class's claims.

11. Class Counsel have substantial experience prosecuting and settling employment class actions, including wage-and-hour class actions, and are well-versed in wage and hour law and class action law.

12. The work that Class Counsel has performed both in litigating and settling this case demonstrates their skill and commitment to representing the Settlement Class's interests.

D. Appointment of Settlement Administrator

13. For settlement purposes only, the Court appoints Rust Consulting, Inc. as the Settlement Administrator to administer the Settlement as more specifically set forth in the Settlement Agreement in accordance with the terms and conditions of the Settlement Agreement.

14. Consistent with the terms of the Settlement Agreement, Defendants are authorized to send personal and confidential information concerning Class Members to the Settlement Administrator, including, without limitation, the Social Security Numbers of Class Members.

E. Settlement Notice

15. The Court approves the proposed Notice of Settlement of Class Action Lawsuit ("Notice"), as well as the Claim Form attached thereto, filed on November 19, 2019. (NYSCEF Doc No. 47).

16. CPLR 908 requires that "[n]otice of the proposed . . . compromise [of a class action] shall be given to all members of the class in such manner as the court directs."

17. The content of the Notice fully complies with due process. The Notice describes the terms of the Settlement, informs the Settlement Class Members about the allocation of

attorneys' fees and costs, and provides specific information regarding the date, time, and place of the Final Approval Hearing.

18. The Settlement Administrator is authorized to mail those documents in substantially the form approved, after they are updated with the appropriate amounts, dates and deadlines consistent with the Settlement Agreement and this Order to the applicable Settlement Class Members as provided in the Settlement Agreement.

19. Any written objection to the Settlement made by a Settlement Class Member must be sent to the Settlement Administrator by March 13, 2020.

F. Class Action Settlement Procedure

20. The Court hereby adopts the settlement approval process as set forth in the Settlement Agreement.

21. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

22. The Court will conduct a Fairness Hearing pursuant to CPLR 901 on April 7, 2020, at 2:15 p.m., in Part 29 of the Supreme Court of the State of New York, located at 71 Thomas Street Room 104, New York, New York 10013-3821 (the "Fairness Hearing").

23. The Fairness Hearing will occur for the purposes of: (a) hearing any timely and properly filed objections; (b) making a final determination as to the fairness, adequacy, and reasonableness of the Settlement Agreement terms and procedures; (c) fixing the amount of attorneys' fees and litigation costs and expenses to Class Counsel and service awards, if any, to Plaintiffs; and, if appropriate, (d) entering an Order of Dismissal dismissing the action in its entirety with prejudice. The Fairness Hearing may be continued without further notice to Settlement Class Members. Plaintiffs shall file their motion for Final Approval of the Settlement,

and Class Counsel shall file their motion for attorneys' fees, litigation costs and expenses, and service awards on or before April 3, 2020.

24. The following dates shall govern the schedule in this action:

<u>November 22, 2019</u>	La Pecora Bianca shall provide Class Counsel and the Settlement Administrator with the names, last known addresses, email addresses, and telephone numbers of the Settlement Class Members ("Class List"). La Pecora Bianca shall also provide the Settlement Administrator with the social security numbers of the Settlement Class Members.
<u>December 13, 2019</u>	Mailing of Notice and Claim Form.
<u>February 7, 2020</u>	Follow up mailing of Postcards.
<u>March 13, 2020</u>	Last day for Settlement Class Members to Opt-In or Opt-Out of the Settlement or to mail written objections to the Settlement to the Settlement Administrator.
<u>April 3, 2020</u>	Last day for filing and serving of papers in support of Final Approval of the Settlement with the Court.
<u>April 7, 2020, at 2:15 P.M.</u>	Fairness Hearing.

CONCLUSION

Accordingly, it is

ORDERED that the motion for preliminary approval is granted; and it is further

ORDERED that movants shall order, pay for, and upload a copy of the November 6, 2019 oral argument transcript to NYSCEF within 30 days of the NYSCEF filing date of the decision and order on this motion; and it is further

ORDERED that movants shall serve a copy of this order with notice of entry on Defendants within 10 days of the NYSCEF filing date of the decision and order on this motion; and it is further

ORDERED that the parties are directed to appear in Part 29, located at 71 Thomas Street Room 104, New York, New York 10013-3821 on Tuesday, April 7, 2020, at 2:15 p.m., for the Fairness Hearing.

The foregoing constitutes the decision and order of the Court.

11/20/2019
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT		

APPLICATION:

CHECK IF APPROPRIATE:

Robert D. Kalish
HONORABLE ROBERT D. KALISH
 J.S.C.