

**Martinez v Hospital for Special Surgery Pho, Inc.**

2021 NY Slip Op 31620(U)

May 13, 2021

Supreme Court, New York County

Docket Number: 157925/2019

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. PAUL A. GOETZ **PART** **IAS MOTION 47EFM**

*Justice*

-----X

RALPH MARTINEZ

Plaintiff,

- v -

THE HOSPITAL FOR SPECIAL SURGERY PHO, INC.,

Defendant.

-----X

**INDEX NO.** 157925/2019

**MOTION DATE** N/A

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for COMPROMISE.

Upon the foregoing documents, it is

**ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY  
APPROVAL OF THE SETTLEMENT AGREEMENT AND RELEASE,  
CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES, APPOINTMENT  
OF THE PLAINTIFF AS CLASS REPRESENTATIVE, APPOINTMENT OF THE LAW  
FIRM OF LOUIS GINSBERG, P.C. AS CLASS COUNSEL, APPROVAL OF THE  
CLASS NOTICE AND CLAIMS FORM AND FOR THE SCHEDULING OF A  
FAIRNESS HEARING**

The above-entitled matters came before the Court on Plaintiff’s Motion for Preliminary Approval of the Settlement Agreement and Release, Certification of the Class For Settlement Purposes, Appointment of the Plaintiff as Class Representative, Appointment of the Law Firm of Louis Ginsberg, P.C. as Class Counsel, Approval of the Class Notice and Claims Form and For the Scheduling of a Fairness Hearing (“Motion for Preliminary Approval”).

**I. PRELIMINARY APPROVAL OF SETTLEMENT**

1. Based upon the Court’s review of Plaintiff’s Unopposed Motion for Preliminary Approval of Settlement, the Memorandum of Law In Support and the Declaration of Louis Ginsberg, Esq. (“Ginsberg Declaration”) and the exhibits attached thereto, the Court grants

preliminary approval of the settlement memorialized in the Settlement Agreement And Release (“Agreement”), attached to the Ginsberg Declaration as Exhibit A.

2. The Court concludes that the proposed Agreement is within the range of possible settlement approval, such that notice to the Class is appropriate.

3. The Court finds that the Agreement is the result of extensive, arm’s length negotiations by counsel well-versed in the prosecution of wage and hour class actions, and that the proposed settlement has no obvious deficiencies.

## **II. CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS**

4. The Court finds that this action satisfies all of the prerequisites of New York Civil Practice Law and Rules (“CPLR”) § 901, and that consideration of the CPLR § 902 factors support certification for purposes of settlement.

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

All current and former respiratory therapists, who worked for Defendant in the State of New York, who are or were employed by Defendant at any time from August 13, 2013 through the date of Preliminary Approval.

## **III. APPOINTMENT OF PLAINTIFF’S COUNSEL AS CLASS COUNSEL**

6. The Court appoints Louis Ginsberg, Esq. of the Law Firm of Louis Ginsberg, P.C. as Class Counsel because they did substantial work identifying, investigating, litigating, and settling Plaintiff’s and the class members’ claims, have years of experience prosecuting and settling wage and hour class actions, and are well-versed in wage and hour law and in class action law.

7. The work that the Law Firm of Louis Ginsberg, P.C. has performed both in litigating and settling this case demonstrates their commitment to the class and to representing the class' interests.

8. The Court appoints Plaintiff Ralph Martinez as the class representative.

#### **IV. CLASS NOTICE AND CLAIMS FORM**

9. The Court approves the Plaintiff's Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing ("Class Notice") and Claims Form, attached as Exhibit B to the Ginsberg Declaration, and directs their distribution to the Class.

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

11. The contents of the Class Notice fully complies with due process. The Class Notice describes the terms of the settlement, explains how class members can participate in the settlement and how class members can object or opt-out, informs the class about the allocation of attorneys' fees and costs, and provides specific information regarding the date, time, and place of the final approval hearing.

#### **V. CLASS ACTION SETTLEMENT PROCEDURE**

12. The Court hereby adopts the following settlement procedure:

- a. Defendant shall pay to the Settlement Claims Administrator Seven Thousand and Five Hundred Dollars (\$7,500) upon Preliminary Approval. Defendant shall also pay Two Hundred and Forty-Two Thousand One Hundred Dollars (\$242,100.00) into a Qualified Settlement Fund ("QSF") set up by the Settlement Claims Administrator no later than thirty (30) calendar days after the Court's Order Granting Preliminary Approval of the Settlement. Within fifteen (15) days after the Motion For Final Approval being granted, Defendant shall pay into the QSF any remaining monies due as a result of the rate of participation from the Class Members, which shall not exceed \$140,400;

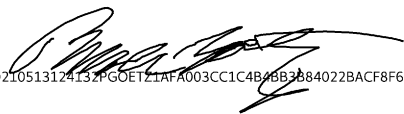
- b. Within 10 calendar days after the Court issues its Order Granting Preliminary Approval, Defendant's Counsel will provide the Settlement Claims Administrator with a list, in electronic form with the names, dates of employment and last known addresses of Plaintiff and all Class Members (the "Class List");
- c. The Settlement Claims Administrator shall mail, via First Class United States mail, postage prepaid, the Class Notice with Claims Form to Class Members within 15 days after the entry of the Preliminary Approval Order by the Court;
- d. Class Members will have 45 days from the date the Class Notice and Claims Form is initially mailed to file a Claims Form, opt out of or object to the settlement ("Notice Period"). To be effective, the Claims Form, objection or opt-out must be received by the Settlement Claims Administrator within 45 days of the initial mailing of the Class Notice and Claims Form;
- e. Plaintiff will file a Motion for Final Approval of Settlement no later than five (5) calendar days before the Fairness Hearing;
- f. The Court will hold a final Fairness Hearing on **August 5, 2021 at 11:00 am via Microsoft Teams** (which date is approximately 75 days after the date of this Order);
- g. If the Court grants Plaintiff's Motion for Final Approval of the Settlement, the Court will issue an Order Granting Final Approval. If no party appeals the Court's Order Granting Final Approval, the "Final Effective Date" of the settlement will be thirty (30) days after the Court enters its Order Granting Final Approval and the expiration of any appeal period;
- h. If there is an appeal the latest of the following, if applicable, becomes the Final Effective Date: (1) any appeal from the Final Approval Order has been finally dismissed; (2) the Final Approval Order has been affirmed on appeal in a form substantially identical to the form of the Final Approval Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Approval Order in a form entered by the Court;
- i. The Settlement Claims Administrator will pay the Class Members who timely file a Claims Form and who do not opt out, their

individual settlement payments within fifteen (15) days after the Final Effective Date;

- j. The Settlement Claims Administrator will pay the Court-approved service payment to Plaintiff within fifteen (15) days after the Final Effective Date;
- k. The Settlement Claims Administrator will pay Class Counsel its Court-approved attorneys' fees, and expenses within fifteen (15) days after the Court's Order granting Final Approval;
- l. The Settlement Claims Administrator shall recover its agreed upon fees from the Settlement Amount. In the event that the Settlement Agreement is not finally approved, any fees and expenses of the Settlement Claims Administrator already spent or funds attributable to labor and/or expenses incurred but not yet paid shall be paid out of the QSF; and

The parties shall abide by all other terms of the Settlement Agreement.

SO ORDERED.



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<u>5/13/2021</u>			<u>PAUL A. GOETZ, J.S.C.</u>	
<b>DATE</b>				
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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE