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| <b>Colaj v Roberts</b>                                                                                                                                                                                                         |
| 2021 NY Slip Op 31659(U)                                                                                                                                                                                                       |
| May 17, 2021                                                                                                                                                                                                                   |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 452243/2017                                                                                                                                                                                           |
| 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

LINDITA COLAJ, GOMAA OSMAN,

Plaintiff,

- v -

SAMUEL ROBERTS, STEVEN BANKS, NANCY WILLIAMS,

Defendant.

-----X

INDEX NO. 452243/2017

MOTION DATE N/A

MOTION SEQ. NO. 009

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 276, 277, 278, 279, 280, 281, 282, 283, 284

were read on this motion to/for

MISCELLANEOUS

This class action was commenced to obtain subsistence-level cash assistance benefits, known as Safety Net Assistance, for asylum applicants with work authorizations. Prior to this lawsuit, defendants did not consider asylum applicants with work authorizations, like plaintiffs, to be “permanently residing under color of law” (“PRUCOL”), and therefore found them ineligible for Safety Net Assistance benefits. In November 2017, shortly after this lawsuit was filed, defendants issued policy guidance stating that asylum applicants with work authorizations would be considered PRUCOL for purposes of receiving Safety Net Assistance. Nevertheless, some asylum applicants with work authorizations continued to be denied benefits based on their immigration status.

In October 2020, after many months of settlement negotiations, the parties entered into a proposed settlement agreement. The settlement agreement provides substantial relief to class members who have been denied Safety Net Assistance due to their status as asylum applicants with work authorizations since August 7, 2014, and to those who will apply for Safety Net Assistance in the future. On December 2, 2020, this court issued an order granting preliminary

approval of the settlement and the class for settlement purposes consisting of “[a]ll past, current, and future applicants for public assistance in New York State who filed or submitted, or will file or submit, applications to their Social Services Districts on or after August 7, 2014, and were or are asylum applicants with employment authorization at the time of the application, and were or will be denied Safety Net Assistance solely because they held or hold non-citizen status.”

Pursuant to the order, the parties distributed the notice of the settlement of the class action and fairness hearing to the class members. The parties did not receive any objections to the settlement agreement in response to the notice. On March 24, 2021, pursuant to the notice, the Court held a telephonic fairness hearing in this matter. No objections were made to the settlement agreement at the fairness hearing.

Plaintiffs now seek class certification and final approval of the proposed settlement agreement. The principal terms of the settlement are as follows: First, defendants will maintain and comply with the policy they adopted in 2017 in response to this lawsuit, which provides that asylum applicants with work authorizations are PRUCOL and therefore eligible for Safety Net Assistance. Second, defendants will disseminate this policy guidance information to public assistance applicants and recipients in the local social service districts and remind hearing officers who adjudicate Safety Net Assistance cases about this policy guidance. Third, defendants will notify class members who have been previously identified that they are entitled to receive Safety Net Assistance benefits and that may go to their district to apply for those benefits based on their current circumstances. Fourth, defendants will issue a one-time retroactive benefits payment to class members who have open public assistance cases as of a designated date so long as those class members have not previously received benefits for the period ending on November 30, 2017 by reason of agency action, litigation or administrative

relief. Fifth, working in conjunction with class counsel, defendants will take corrective action to open public assistance cases and restore benefits to those class members who were wrongfully denied.

#### Class Certification

CPLR 901(a) sets forth five prerequisites for class certification: “(1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy” (*City of New York v. Maul*, 14 N.Y.3d 499, 508 [2010]).

With respect to numerosity, the estimated number of class members is sufficient to satisfy this requirement. Defendants have disclosed that there are approximately 1,000 individuals who are entitled to restored benefits, as required by the settlement agreement, and there are approximately 2,000 individuals who are potential class members whose files have not yet been reviewed. The parties expect that 5-6% of these 2,000 individuals will qualify as class members and thus the total number of class members who were denied Safety Net Assistance prior to the November 2017 policy change is approximately 1,100, which satisfies the numerosity requirement of CPLR 901 (*Galdamez v. Biordi Const. Corp.*, 50 A.D.3d 357, 358 [1<sup>st</sup> Dep’t 2008]).

With respect to the issue of commonality, this requirement has been satisfied as well. The common question here is whether defendants’ refusal to provide Safety Net Assistance to

applicants because of their immigration status violates the Constitution, and the answer to this question controls the outcome of this case for every class member. Therefore, certification of the class is appropriate as it will promote uniformity of decisions for those similarly situated and save time, effort and expense (*see Dabrowski v. Abax Inc.*, 84 A.D.3d 633 [1<sup>st</sup> Dep't 2011]).

Next, pursuant to CPLR 901(a)(3), the plaintiffs' claims must be typical of the putative class members claims in that they are "derived from the same practice or course of conduct that gave rise to the . . . claims of other class members and are based upon the same legal theory" (*Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 99 [2d Dep't 1980]; *see also Phudeman v. Northern Leasing Sys.*, 74 A.D.3d 420 [1<sup>st</sup> Dep't 2010]). Here, plaintiffs Lindita Colaj and Gomaa Osman, like all members of the class, are asylum seekers with work authorizations who were denied Safety Net Assistance due to their immigration status, and like other class members, they face the prospect of future denial of benefits due to defendants' failure to properly implement the 2017 policy change. The fact that plaintiffs Colaj and Osman received retroactive benefits and no longer require relief in their individual cases poses no conflict with the certification of the class (*Cheng v. Oxford Health Plans*, 84 A.D.3d 673, 675 [1<sup>st</sup> Dep't 2011]). Further, nothing in the record suggests that the named plaintiffs or class counsel, the New York Legal Assistance Group, will not act in the best interests of the class and the competence and experience of class counsel has been demonstrated throughout the history of this case.

Finally, a class action is the superior vehicle for adjudicating this controversy. Class members are asylum applicants applying for Safety Net Assistance and thus lack the sophistication and resources to pursue their claims individually. Further, judicial resources would be taxed much more heavily in managing multiple individual proceedings, which would unduly burden the courts and create the possibility of conflicting decisions.

### Settlement Agreement

Under CPLR 908, court approval is required for any compromise of a class action. A court may approve the settlement of a class action only if the proposed settlement is fair, adequate, reasonable and in the best interest of class members (*Gordon v. Verizon Comms.*, 148 A.D.3d 146, 156 [1<sup>st</sup> Dep't 2017]). This review must consider the following factors: the likelihood of success, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact (*id.* [citing *In re Cold Indus Shareholder Litig. v. Cold Indus.*, 155 A.D.2d 154, 160 (1<sup>st</sup> Dep't 1990)]). Approval is appropriate when “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval” (*In re Initial Pub. Offerings Sec. Litig.*, 226 F.R.D. 186, 191 [S.D.N.Y. 2005]).

Here, the parties, through experienced counsel, engaged in arms' length negotiations for several months with the court's involvement to reach the proposed settlement agreement. The proposed settlement confers substantial benefits to class members, including: Requiring defendants to maintain their 2017 revised policy classifying asylum applicants with work authorizations as PRUCOL and thus eligible to receive Safety Net Assistance; requiring defendants to notify class members about their eligibility for benefits; and conferring retroactive benefits to certain class members who were previously denied these benefits between August 7, 2014 and November 21, 2017. For a class member who was denied Safety Net Assistance in August 2014, the amount of the standardized restored benefit is \$1,755. The parties estimate that the retroactive benefits would be provided to approximately 1,100 individuals. Thus, the

settlement will provide much needed assistance to many indigent individuals and is therefore in the public interest.

Finally, continued litigation in this matter poses significant risks as the court has not yet certified a class and defendants deny any wrongdoing. Continued litigation would also likely result in extensive motion practice and appeals, further delaying the resolution of this case. The impact of any delay will be felt acutely by the proposed class members, an indigent and vulnerable population, as they would be denied desperately needed subsistence level benefits. Further, all parties fully support the settlement and plaintiffs' counsel recommends approval based upon their experience and detailed knowledge of the strengths and weaknesses of the case. Accordingly, it is

ORDERED that the Court adopts the definitions set forth in the Stipulation and Order of Settlement which was entered into by the parties on October 21-22, 2020 ("Settlement Agreement"); and it is further

ORDERED that the Court certifies a class for settlement purposes consisting of: All past, current, and future applicants for Public Assistance ("PA") in New York State ("NYS") who filed or submitted, or will file or submit, applications to their Social Services Districts on or after August 7, 2014, and were or are Asylum Applicants with Employment Authorization at the time of the PA application, and were or will be denied Safety Net Assistance ("SNA") solely because they held or hold that non-citizen status; and it is further

ORDERED that the Court appoints named Plaintiffs Lindita Colaj and Gomaa Osman as representatives of the Plaintiff Class, and the New York Legal Assistance Group ("NYLAG") as Settlement Class Counsel ("Class Counsel"); and it is further

ORDERED that the Court approves the Settlement of this action on the terms set forth in the Settlement Agreement, which was preliminarily approved by this Court by Order dated December 2, 2020, and incorporates the terms of the Settlement Agreement by reference; and it is further

ORDERED that the Court approves Attorneys' Fees to Class Counsel as set forth in the Settlement Agreement; and it is further

ORDERED that the case is dismissed with prejudice according to the terms of the Settlement Agreement and the Clerk shall enter judgment accordingly.

5/17/2021

DATE

CHECK ONE:

☒

CASE DISPOSED

☒

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

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PAUL A. GOETZ, J.S.C.☐ NON-FINAL DISPOSITION☐ GRANTED IN PART☐

OTHER

☐ SUBMIT ORDER☐ FIDUCIARY APPOINTMENT☐

REFERENCE