

Moran v JLJ IV Enters., Inc.
2021 NY Slip Op 32279(U)
October 27, 2021
Supreme Court, New York County
Docket Number: Index No. 651136/2019
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

-----X
OLIVER MORAN, JAIME DE LEON, INDIANA :
MOTA, and JOSE OSCAR PERDOMO, on behalf of :
themselves and all others similarly situated, :
: :
Plaintiffs, :
: :
-against- :
: :
JLJ IV ENTERPRISES, INC. d/b/a JLJ :
ENTERPRISES, PED PROTECT, INC., K. G. P. INC., :
and LIBERTY MUTUAL INSURANCE COMPANY, :
: :
Defendants. :
-----X

Index No. 651136/2019

~~PROPOSED~~ ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ~~ENTERING~~ FINAL JUDGMENT

This matter came on for hearing upon the Court’s Order of June 16, 2021 (NYSCEF No. 104), followed by the Plaintiffs’ unopposed motion for final approval of the Settlement in this Action (NYSCEF Nos. 109–117). Due and adequate notice having been given to the Class (as defined below), and the Court having considered all papers filed and proceedings had herein and all oral and written comments received regarding the proposed Settlement, and having reviewed the record in the above captioned matter, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, ~~AND DECREED~~ AS FOLLOWS:

1. On October 27, 2021, at 10:00 a.m. the Court held a Fairness Hearing.
2. The Court has jurisdiction over the subject matter of the above-captioned action, the named Plaintiffs (“Class Representatives”), Defendants JLJ IV Enterprises, Inc. (“JLJ”), PED Protect, Inc. (“PED”), K.G.P. Inc. (“KGP”), and Liberty Mutual Insurance Company (collectively, “Defendants”), and the Class consisting of all individuals who were employed by PED and/or KGP who worked as flaggers, flagpersons, and/or

pedestrian crossing guards on any of JLJ's public work sites in New York City at any point between January 1, 2014, and February 8, 2019, as defined in the Court's Order dated June 16, 2020 (NYSCEF No. 85 at page 8).

3. The term "Agreement" refers to the Agreement for Class Action Settlement and Release filed by the Parties in this Action in connection with their application for preliminary approval of their Settlement (NYSCEF No. 100), and all terms in this Order shall have the same meanings as the terms defined in the Agreement, unless specifically provided herein.

4. The Court grants final approval of the Settlement on the terms set forth in the Agreement.

5. The Court finds that the distribution by First-Class Mail of the Class Notices constituted the best notice practicable under the circumstances to all persons within the definition of the Class and fully met the requirements of due process under the United States Constitution, the New York State Constitution, and Article 9 of the Civil Practice Law and Rules. Based on evidence and other materials submitted in conjunction with the Fairness Hearing, the Class Notice disseminated to the Class was adequate. These papers informed Class Members of the terms of the Settlement, their rights to receive a share of the Settlement Payment, their rights to object to or to elect not to participate in the Settlement and pursue their own remedies, and their rights to appear at the Fairness Hearing and be heard regarding approval of the Settlement. Adequate periods of time were provided by each of these procedures. No Class Member objected to the Settlement. Only one Class Member opted out of it.

6. The Court approves the Settlement of the above-captioned action, and each of the releases and other terms set forth in the Agreement, as fair, just, reasonable, and adequate as to the Class, the Class Representatives, and Defendants (collectively, the

“Settling Parties”). The Settling Parties, including Class Counsel and the Settlement Administrator, are directed to perform in accordance with the terms set forth in the Agreement.

7. All claims asserted in the above-captioned matter arising out of or relating to Defendants’ alleged failure to pay prevailing wages are dismissed with prejudice as to the Class Representatives and the Class Members. The Settling Parties are to bear their own attorneys’ fees and costs, except as otherwise provided in the Agreement.

8. By this Order and Judgment, each Class Member who has not validly and timely requested exclusion from the Settlement by opting out (including the Class Representatives) shall be deemed to have, and by operation of this Order and Judgment shall have, fully, finally, and forever released and discharged the Released Parties (as defined in the Agreement) from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities of every kind, nature, and description, whether known or unknown, whether anticipated or unanticipated, concerning or arising out of the payment of prevailing wages under the New York Labor Law (“NYLL”) allegedly due to them from Defendants or the Released Parties during the Class Period that (a) were pled in the Action and/or (b) could have been pled based upon the factual allegations in the Action, including related claims for interest and attorneys’ fees and costs (the “Class Members’ Released Claims”). For the sake of clarity, the Class Members’ Released Claims are limited to claims relating to or arising out of a failure to pay Class Members prevailing wages under the NYLL, along with related claims for interest and attorneys’ fees and costs, that were or could have been pled in the Action.

9. The Court approves the Class Representatives’ signing of a general release in favor of the Released Parties in exchange for receipt of their Settlement Shares and eligibility for service awards.

10. Neither the Agreement nor the Settlement contained in it, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the released claims described above or any wrongdoing or liability of Defendants or any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants or any of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

11. The Action is dismissed on the merits and with prejudice, permanently barring the Class Representatives and Class Members (except for those who timely filed valid written requests for exclusion from the Class) from prosecuting any of the Class Members' Released Claims.

12. The Court finds that the plan of allocation set forth in the Agreement is fair and reasonable and that distribution of the Settlement Payment to Class Members, Class Counsel, and the Class Representatives shall be done in accordance with the terms outlined in the Class Notice and Agreement. Pursuant to the Class Notice and Agreement, Defendants shall pay Two Million Nine Hundred Twenty Thousand Dollars and Zero Cents (\$2,920,000.00) (the "Settlement Payment"), to fund a Settlement Fund administered by the Settlement Administrator. The Court directs Defendants to deposit the Settlement Payment into the Settlement Fund per the terms of the Agreement. Defendants shall not be required to make any other payment beyond the Settlement Payment in connection with the Settlement other than Defendants' payment of its own employer-side payroll taxes, which Defendants shall pay for separately from and in addition to the Settlement Payment amount. The Settlement Administrator shall pay the following amounts out of the Settlement Payment: (i) all Settlement Shares as defined in

the Agreement; (ii) Class Counsel's approved attorneys' fees of \$973,333.33 and costs of \$5,042.94 in this matter; (iii) service awards to each of the four Class Representatives in an amount of \$15,000.00, for a combined total of \$60,000.00; and (iv) the Settlement Administrator's fees in the amount of \$15,501.00. The Court finds that these payments are fair and reasonable. Accordingly, the Court hereby awards to Class Counsel attorneys' fees of \$973,333.33 and an additional amount of \$5,042.94 as reimbursement of costs it incurred to date prosecuting this Action. The service awards in an amount of \$15,000.00 to each Class Representative, for a combined total of \$60,000.00 to all four Class Representatives, for his or her services to the Class are approved. The Settlement Administrator's fees of \$15,501.00 are also approved.

13. After deducting the foregoing amounts for Class Representatives' service awards, Class Counsel's attorneys' fees and costs, and the Settlement Administrator's fees, the amount remaining in the Settlement Fund is the Net Settlement Fund. Working with Class Counsel, the Settlement Administrator shall calculate the Settlement Shares due to each Class Member pursuant to the terms of the Agreement. The Settlement Administrator shall then issue Settlement Checks, each for the amount of each Class Member's Settlement Share, and distribute them to the Class Members per the terms of the Agreement. Class Members will have 180 days from the date the Settlement Administrator mails the Settlement Checks to cash and/or deposit them. A Class Member's failure to cash and/or deposit his or her Settlement Check within the 180-day period will result in loss of his or her Settlement Share.

14. The money amount remaining in the Settlement Fund on the 181st day after the Settlement Administrator mails the Settlement Checks, consisting of Settlement Shares not deposited or cashed, Settlement Shares of Class Member who opted out of the

Settlement, and interest accrued on amounts that were in the Settlement Fund, are Unredeemed Funds that shall be returned to Defendants as set forth in the Agreement.

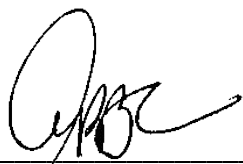
15. This matter is hereby dismissed with prejudice. The Court reserves and retains exclusive and continuing jurisdiction over the Action, the Class Representatives, the Class, Class Counsel, and Defendants for the purposes of supervising the implementation, effectuation, enforcement, construction, administration, and interpretation of the Settlement and this Judgment.

16. This document constitutes a judgment for purposes of Article 50 of the Civil Practice Law and Rules.

SO ORDERED:

ENTER: _____

HON. ARLENE P. BLUTH, J.S.C.



10/27/2021
New York, NY