

<b>Luchko v Barclay Operating Corp.</b>
2022 NY Slip Op 30048(U)
January 5, 2022
Supreme Court, New York County
Docket Number: Index No. 157657/2020
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

ANNA LUCHKO, individually and on behalf of others  
similarly situated,

Index No.: 157657/2020

Plaintiffs,

- against -

BARCLAY OPERATING CORP. d/b/a  
INTERCONTINENTAL NEW YORK BARCLAY,

Defendant.

~~PROPOSED~~  
**ORDER GRANTING  
APPROVAL OF SETTLEMENT**

**WHEREAS**, Plaintiff Anna Luchko, on behalf of herself and persons who are alleged to be similarly situated (“Plaintiffs”), has applied to this Court for an order approving the settlement of the above-captioned action (the “Action”), and has submitted in support thereof the Settlement Agreement and Release (“Settlement Agreement”)<sup>1</sup>, the Memorandum of Law in Support of Plaintiffs’ Unopposed Motion for Approval of the Proposed Settlement, and the Affirmation of Brett R. Cohen (“Cohen Affirmation”) along with the exhibits attached thereto; and

**WHEREAS**, the Court has reviewed Plaintiffs’ motion seeking approval of the settlement of the Action as memorialized in the Settlement Agreement, which motion was unopposed by Defendant Barclay Operating Corp. d/b/a InterContinental New York Barclay (“Defendant”), and further having reviewed and considered the Settlement Agreement and the Cohen Affirmation;

<sup>1</sup> All capitalized terms in this Order shall have the meaning set forth in the Settlement Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. The Court finds that the terms and conditions of the settlement memorialized in the Settlement Agreement are fair, adequate, and reasonable as to all potential members of the Class (defined below) when balanced against the probable outcome of further litigation relating to liability and damages issues and, therefore, meet the requirements for approval such that notice to the Class about the settlement is appropriate.

2. The Court finds that the Agreement is the result of extensive, arms'-length negotiations, and is the product of extensive investigation and research by counsel for Plaintiffs and for Defendant, each of whom is well-versed in the prosecution and defense of wage and hour class and collective actions, such that counsel for the parties are able to reasonably evaluate the strengths and weaknesses of their clients' respective positions.

3. The Court grants approval of the parties' settlement as memorialized in the Settlement Agreement and directs the parties to carry out the settlement according to the terms of the Settlement Agreement.

4. The Court finds that all requirements of NY CPLR §§ 901 and 902, and 29 USC § 216(b), are met for settlement purposes only and certifies for settlement purposes only the following class of persons (the "Class") (with the members of the Class being the "Class Members" or "Settlement Class Members"):

All individuals who, whether employed directly by Defendant or assigned by a third-party staffing company or similarly vendor, performed service work at catered events held at the InterContinental Barclay in New York City for or on behalf of Defendant from September 21, 2014, through May 4, 2021, in such trades, classifications, and professions that customarily receive gratuities, including but not limited to servers, waiters, banquet servers, bussers, bartenders, captains, and runners, and whose names appear on the Class List.

5. The Court recognizes that the Plaintiffs and Defendant stipulate and agree to certification of the Class for settlement purposes only. This stipulation and the Settlement

Agreement will not be deemed admissible, including for purposes of asserting that a class should be certified, in this proceeding, should the Settlement Agreement not become final, or any other proceeding.

6. The Court appoints Plaintiffs' counsel Leeds Brown Law, P.C. as class counsel for purposes of effectuating the settlement ("Class Counsel").

7. The Court approves the proposed Notice of Settlement of Class Action Lawsuit, Claim Form and Release and related materials annexed to the Cohen Affirmation, finding that they fully comply with due process and NY CPLR §§ 901 and 902, and directs their distribution to the Class in accordance with the terms of the Settlement Agreement, which the Court finds meets the requirements of due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

8. The Settlement Agreement is not a concession or admission and shall not be used against Defendant as an admission or indication with respect to any claim of any fault or omission by Defendant. Regardless whether the settlement is finally approved, neither the Settlement Agreement, nor any document, statement, proceeding, or conduct related to the settlement, nor any reports or accounts thereof, shall in any event be:

- a. Construed as, offered or admitted in evidence as, received as, or be deemed to be evidence for any purpose adverse to Defendant, including, but not limited to, evidence of a presumption, concession, indication, or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or damage; or
- b. Disclosed, referred to, or offered or received in evidence against Defendant in any further proceeding in the Action, or in any other civil, criminal, or administrative action or proceeding, except for purposes of settling the Action or enforcing the settlement pursuant to the Settlement Agreement.

9. The Court shall retain discretion to schedule a hearing in the event any member of the Class files an objection and specifically requests to be heard. Plaintiffs' Counsel shall notify the Court and Defendant within one week of receiving any objection letter. Should the Court opt to schedule a hearing for this purpose, upon the scheduling of a hearing date, Plaintiffs' Counsel shall instruct the Settlement Administrator to publish a notice to all Authorized Claimants advising them of the date, time, and location of the hearing. The Settlement Agreement shall not become Final Effective, as defined in Section 1.19 of the Settlement Agreement, until such time as the hearing is held, and the Court has issued an order authorizing the parties to complete the settlement process.

10. Except as to any individual claim of those persons who validly and timely opt out of and be excluded from the Settlement, on the Final Effective Date all of the Released Class Claims shall be dismissed with prejudice as to Plaintiff Luchko, the Authorized Claimants, and all applicable Settlement Class Members as set forth in the Settlement Agreement.

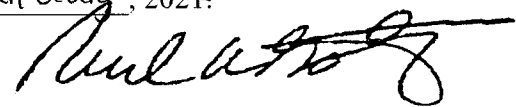
11. By this Order, on the Final Effective Date, Plaintiff Luchko, the Authorized Claimants and all Settlement Class Members who do not validly and timely opt out of the Settlement, shall be deemed to have, and by operation of the judgment to be entered shall have, fully, finally, and forever released, relinquished, and discharged all Released Class Claims and any other claims as set forth in the Settlement Agreement.

12. In the event the settlement does not become effective in accordance with the terms of the Settlement Agreement, or is terminated, canceled, or fails to become effective for any reason, this Order shall be rendered null, void, and shall be vacated and shall have no effect whatsoever in this Action or in any other litigation or proceeding and the parties shall revert to their respective positions as of before entering into the Settlement Agreement.

13. The Court directs that the following dates shall govern the schedule in this action:

<p><b>Step 1:</b> Settlement Agreement § 2.5(C)  <i>Within 31 days of entry of this Order</i></p>	<p>Mailing of Class Notice via USPS</p>
<p><b>Step 2:</b> Settlement Agreement §§ 1.1, 1.27  <i>60 days after completion of Step 1</i></p>	<p><b><u>Notice Response Deadline</u></b></p> <ul style="list-style-type: none"> <li>• Last day for Class Members to “opt out” of the Settlement or to submit objections to the Settlement</li> <li>• Last day for Class Members to qualify as an Authorized Claimant by filing Claim Form and Release</li> </ul>
<p><b>Step 3:</b> Settlement Agreement § 1.19  <i>105 days after completion of Step 1</i></p>	<p><b><u>Final Effective Date</u></b>, unless otherwise directed</p>
<p><b>Step 4:</b> Settlement Agreement § 3.2  <i>110 days after completion of Step 1</i></p>	<p>By such date, Defendant shall have funded the Qualified Settlement Account in an amount equal to the Final Settlement Amount</p>
<p><b>Step 5:</b> Settlement Agreement § 3.9  <i>Within 3 days after completion of Step 4</i></p>	<p>Settlement Administrator to mail each Authorized Claimant his or her individual settlement check, send Class Counsel court-approved attorneys’ fees and costs, and pay Named Plaintiff court-approved Service Award</p>

It is so ORDERED this 5<sup>th</sup> day of January, ~~2021~~ <sup>2022</sup>.



Honorable Paul A. Goetz, J.S.C.