

Rahab v Amy Scherber, Inc.
2022 NY Slip Op 33075(U)
September 8, 2022
Supreme Court, New York County
Docket Number: Index No. 161079-2020
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JIMMY A. RAHAB, on behalf of himself
and all others similarly situated,

Index No.: 161079-2020

Plaintiff,

-against-

AMY SCHERBER, INC. d/b/a
AMY'S BREAD,

Defendant.
-----X

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF THE JOINT STIPULATION OF
SETTLEMENT AND RELEASE, CERTIFICATION OF THE
SETTLEMENT CLASS FOR SETTLEMENT PURPOSES,
APPOINTMENT OF THE NAMED PLAINTIFF AS CLASS
REPRESENTATIVE FOR SETTLEMENT PURPOSES, APPOINTMENT
OF BOUKLAS GAYLORD LLP AS CLASS COUNSEL, APPROVAL OF
THE NAMED PLAINTIFF'S PROPOSED CLASS NOTICE OF
SETTLEMENT AND CLAIM FORMS, AND SCHEDULING A FAIRNESS
HEARING**

The above matters came before the Court on Named Plaintiff's Unopposed Motion for Preliminary Approval of the Joint Stipulation of Settlement and Release, Certification of the Settlement Class for Settlement Purposes, Appointment of the Named Plaintiff Jimmy A. Rahab as Class Representative for Settlement Purposes, Appointment of Bouklas Gaylord LLP as Class Counsel, Approval of the Proposed Class Notice of Settlement and Claim Form, and the Scheduling of a Fairness Hearing ("Motion for Preliminary Approval").

I. PRELIMINARY APPROVAL OF SETTLEMENT

1. Based upon the Court's review of the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of the Parties' Joint Stipulation of Settlement and Release, the Affirmation of Mark Gaylord, Esq., and the exhibits attached thereto, the proposed order and

notice of claim, together with all prior pleadings and proceedings herein, the Court grants preliminary approval of the settlement memorialized in the Joint Stipulation of Settlement and Release (the "Settlement Agreement"), attached to the Affirmation of Mark Gaylord as Exhibit A.

2. The Court concludes that the proposed Settlement Agreement is within the range of possible recovery, avoids the burdens and expenses of continued litigation, is fair, adequate and reasonable and not the result of fraud or collusion, such that notice to the Settlement Class is appropriate. In reaching this conclusion, the Court has reviewed the terms and conditions of the Settlement Agreement, including the monetary relief provisions, the plan of allocation, and the release of claims.

3. The Court finds that the Settlement 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"):

Named Plaintiff and all non-exempt employees who worked for Defendant in the State of New York during the Class Period, who do not opt-out of the Action.

III. APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL

6. The Court appoints Bouklas Gaylord LLP as Class Counsel because they performed substantial work identifying, investigating, litigating, and settling Plaintiff's and the Settlement

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 Bouklas Gaylord LLP 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 Jimmy A. Rahab as the class representative for settlement purposes.

IV. CLASS NOTICE AND CLAIM FORM

9. The Court approves the proposed Notice of Proposed Settlement of Class Action Lawsuit, and Fairness Hearing (collectively the "Class Notice"), attached as Exhibit B to the Affirmation of Mark Gaylord, and directs its distribution to the Class.

10. The Court approves the Claim Form and Individual Release ("Claim Form") attached as Exhibit C to the Affirmation of Mark Gaylord and directs its distribution to the Settlement Class.

11. 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."

12. The contents of the Class Notice and Claim Form fully comply with due process. The Class Notice describes the terms of the settlement, including the nature and background of the action, informs the Settlement Class about the allocation of attorneys' fees and costs, explains how Settlement Class Members can object or opt-out, and provides specific information regarding the date, time, and place of the final approval hearing. The Claim Form provides instructions on how to complete and submit a claim as well as a detailed description of the claims being released.

V. CLASS ACTION SETTLEMENT PROCEDURE

13. The Court hereby adopts the following settlement procedure:

- a. Within 10 days after the Court enters its Order Granting Preliminary Approval, the Defendant will provide a list of Settlement Class Members, in electronic form, to the Settlement Administrator, including the last known addresses, and email addresses for each Settlement Class Member and indicating the amount of weeks worked by each Settlement Class Member.
- b. Within 30 days after the Court issues its Order Granting Preliminary Approval, the Settlement Administrator shall mail, via First Class United States mail, postage prepaid, the court-approved Class Notice and Claim Form to all Settlement Class Members.
- c. Settlement Class Members will have 90 calendar days after the date the Class Notice and Claim Form is mailed to submit a Claim Form and current IRS Form W-4, or to request exclusion from the Settlement Class.
- d. Settlement Class Members will have 90 calendar days after the date the Class Notice is mailed to object to the Settlement. If a Settlement Class Member objects to the Settlement he or she must write this Court with the basis for the objection. Such Settlement Class Member may also voice such concerns in person at the Court's final fairness hearing after timely submission of the objection. An employee who opts-out of the Settlement Class may not object to the Settlement.
- e. The Court finds the proposed plan for distributing the Notice will provide the best notice practicable, satisfies the notice requirements of CPLR 904 and satisfies all other legal and due process requirements.
- f. Class Counsel shall file a Motion for Final Approval on or before fourteen (14)

days prior to the final Fairness Hearing to address: (a) whether the proposed Settlement Agreement should be finally approved as fair, reasonable, and adequate; (b) Class Counsel's application for attorneys' fees and reimbursement of litigation expenses; and (c) the application for the Service Award Plaintiffs.

- g. The Court will hold a final Fairness Hearing on February 15, 2023 at 11 am pm, at the Supreme Court of the State of New York, County of New York, located at 111 Centre Street, New York, NY 10013, in courtroom 574, or by remote means.
- h. The Court finds there is no just cause for delay and directs the Clerk to enter this Order.

It is so ORDERED this 8
day September 2022


J.S.C.
HON. SABRINA B. KRAUS
J.S.C.