

Campbell v New York Boiler, Inc.

2023 NY Slip Op 30793(U)

March 16, 2023

Supreme Court, New York County

Docket Number: Index No. 160513/2018

Judge: Eric Schumacher

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This opinion is uncorrected and not selected for official publication.

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

LANGE CAMPBELL, individually and on behalf of all
 other persons similarly situated,

Index No.: 160513/2018

Plaintiffs,

-against-

NEW YORK BOILER, INC., RICHARD BERGER
 and DONALD BERGER,

Defendants.

**ORDER GRANTING APPROVAL OF CLASS ACTION SETTLEMENT,
 CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT
 OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL, APPROVAL OF THE PROPOSED
 NOTICE OF CLASS ACTION SETTLEMENT
 AND THE CLAIM FORM AND RELEASE**

WHEREAS, this matter came before the Court on Plaintiffs' *unopposed* Motion for Approval of Class Action Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiffs' Counsel as Class Counsel, and Approval of Plaintiffs' Proposed Notice of Settlement of Class Action Lawsuit and the Claim Form ("Motion for Approval"); and

WHEREAS, the Court has reviewed the Affirmation of Lloyd Ambinder, Esq., ("Ambinder Affirmation") with exhibits, and all other papers submitted in connection with the Motion for Preliminary Approval;

IT IS HEREBY ORDERED AS FOLLOWS:

I. Approval of the Settlement Agreement

1. The Court grants approval of the settlement memorialized in the Settlement Agreement and Release ("Settlement Agreement"), at NYSCEF doc no. 88, and directs the Parties to carry out the settlement according to the terms of the Settlement Agreement. The Settlement Agreement is hereby incorporated into this Order.

2. As to the application for service awards in an amount not to exceed \$43,000.00 for the named plaintiff and other members of the settlement class, that application is denied. CPLR

909 does not permit service awards, but rather permits the award of “attorneys’ fees to the representatives of the class ... based on the reasonable value of legal services rendered” (see also *Saska v Metropolitan Museum of Art*, 57 Misc3d 218, 228-232 [Sup Ct., NY County 2017, Kornreich, J.]). Here, there has been no showing as to the reasonable value of legal services rendered, if any, by the lay named plaintiff or other members of the settlement class, nor is there any representation that they rendered legal services. As such, the Court declines to grant the award. Consequently, plaintiff is directed to remove all references to the service award in the notice (e.g., in sections 5 and 12) and claim form (e.g., in the italicized paragraph on page two), the form and approval of which is discussed further *infra*.

3. The terms and conditions of the Settlement Agreement were the result of good faith, arms-length settlement negotiations between experienced counsel, with the assistance of experienced mediator Martin Scheinman, Esq., and the parties have met all necessary conditions for preliminary approval to resolve this lawsuit. The Court finds that the terms and conditions of the settlement memorialized in the Settlement Agreement are fair, adequate and reasonable as to all Class Members (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.

II. Conditional Certification of the Class

4. The Court conditionally certifies the following class under CPLR 901 and 902 for settlement purposes only:

Each and every person who was an hourly-paid employee of NEW YORK BOILER, INC. (“NYB”) at any time during the period November 13, 2012 through March 13, 2023 who performed boiler maintenance and repair work upon New York City Housing Authority (“NYCHA”) projects for any length of time pursuant to contracts entered into between NYCHA and NYB (the “Class”). The defined class shall not include any

clerical, administrative, professional, or supervisory employees. Collectively, all Class Members are referred to as the “Class” or “Settlement Class”.

5. CPLR 901 (a) (1) is satisfied because the class of approximately 175 individuals is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.

6. CPLR 901 (a) (2) is satisfied because there are questions of law or fact common to the class which predominate over any questions affecting only individual members.

7. CPLR 901 (a) (3) is satisfied because the claims of the representative party is typical of the claims or defenses of the class.

8. CPLR 901 (a) (4) is satisfied because the representative parties will fairly and adequately protect the interests of the class.

9. CPLR 901 (a) (5) is satisfied because in this wage and hour action a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

III. Appointment of Plaintiffs’ Counsel as Class Counsel

10. The Court appoints Plaintiffs’ Counsel, Virginia & Ambinder, LLP as Class Counsel because the firm’s experience and credentials satisfy all of the requirements of CPLR 901 (a) (4).

11. In particular, Virginia & Ambinder, LLP, did substantial work in identifying, investigating, and preliminarily settling Named Plaintiff and Class Members’ claims. Additionally, Virginia & Ambinder, LLP has extensive experience litigating and settling wage and hour class and collective action cases of this type.

IV. Notice and Claim Form

12. The Court approves the form of the Notice of Settlement of Class Action Lawsuit (“Notice”) and Claim Form at NYSCEF doc nos. 92 and 93, respectively, and directs their

publication to Class Members in accordance with the terms of the Settlement Agreement and this Order.

13. The contents of the Notice and Claim Form fully comply with due process and CPLR 908.

14. The Notice is found to be the best practicable means of providing adequate notice under the circumstances and shall constitute due and sufficient notice of the proposed settlement and the opportunity for a fairness hearing to all persons affected by the settlement in full compliance with the notice requirements of CPLR 904 and 908.

V. Class Action Settlement Procedure

21. For purposes of this Order, all terms not otherwise defined have the same meanings set forth in the Settlement Agreement.

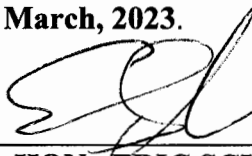
22. The following summarizes the dates that shall govern the schedule in this action:

Within ten (10) days of the signing of this Agreement.	Class Counsel shall file the unopposed Motion for Approval by Order to Show Cause.
Within ten (10) days after the signing of this Agreement.	Parties shall engage the Settlement Claims Administrator.
Within thirty five (35) days of the signing of the Approval Order by the Court.	Defendants will provide the Settlement Claims Administrator with the Class Member List as set forth in this Agreement.
Within thirty (30) days after receipt of the Class Member Mailing List.	Mailing of Notice of Class Action Settlement and Claim Form by Claims Administrator.
Sixty (60) days after date of first mailing of Class Notice.	Last day for Class Members to submit written objections to the Settlement ("Bar Date").

Sixty (60) days after date of first mailing of Class Notice.	Last day for Class Members to file Request for Exclusions from the Settlement ("Bar Date").
Sixty (60) days after date of first mailing of Class Notice.	Last day for Class Members to submit a Valid Claim Form ("Bar Date").
Seventy-five (75) days after date of first mailing of Class Notice.	Late Claim Bar Date: Unless otherwise agreed to by the parties or directed by the Court, the last day for Class Members who failed to file the Claim Form by the Bar Date due to such factors as change of address, military service, hospitalization, or other extraordinary circumstances.
Fifteen (15) days after Bar Date.	Claims Administrator shall certify jointly to Class Counsel and Defense Counsel the following: (a) a list of all Objectors with a copy of objection; (b) a list of all opt-outs with a copy of opt-out form; (c) a list of all Class Members who timely submitted Claim Forms during the Claim Period and qualify as Authorized Claimants, and (d) a list of all Class Members who submitted late or otherwise defective Claim Forms.
No later than five (5) days before Fairness Hearing days after Bar Date.	Class Counsel shall file any objections with the Court, along with an affidavit from the Settlement Claims Administrator and an affirmation from Class Counsel summarizing the notice and claim process, as well as the final settlement allocation to be deposited into the Qualified Settlement Fund. Class Counsel's affirmation shall include a proposed Final Order.
Fairness Hearing held -- No earlier than One Hundred Twenty <u>120</u> days after Approval Order Signed.	DATE: July 18, 2023 TIME: 2:15 p.m. LOCATION: 71 Thomas Street Room 311, New York, NY 10013-3821
Thirty-one (31) days after service of Notice of Entry of the signed Final Order approving this Agreement, and not before June 30, 2023.	Effective Date.

No later than fifteen (15) days after the Effective Date.	Defendants shall fund the Qualified Settlement Fund by wire transfer in an amount equal to the sum of: (1) Class Counsel's approved attorneys' fees, costs, and expenses, (2) the Settlement Claims Administrator's approved fees and costs, (3) the amount of the approved Service Award, (4) the Reserve Amount, and (5) the Net Settlement Amount (i.e., the sum of the amounts payable to Authorized Claimants who submitted Claim Forms on or before the Bar Date).
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IT IS SO ORDERED THIS 16th DAY OF March, 2023.



HON. ERIC SCHUMACHER, J.S.C.