

**Hall v Birchwood Suites Operator LLC**

2024 NY Slip Op 35145(U)

November 14, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 600208/2022

Judge: Christopher Modelewski

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SHORT FORM ORDER

Index No. 600208/2022

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 17 - SUFFOLK COUNTY

**PRESENT:**

MOTION DATE 10/07/2024 (001)  
Mot. Seq. # 001-MG

HON. CHRISTOPHER MODELEWSKI  
Justice of the Supreme Court

-----X

LATOYA HALL, on behalf of herself and all  
others similarly situated,

Plaintiff,

-against-

BIRCHWOOD SUITES OPERATOR LLC,

Defendant.

-----X

LAW FIRM OF LOUIS GINSBERG, P.C.  
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Upon the E-filed documents in this matter numbered 1 to 13, read and considered on the instant unopposed motion of the Plaintiff's attorney in this action for an order granting relief under Article 9 of the CPLR; it is

**ORDERED** that the motion is granted as set forth herein and this matter is set down for a fairness hearing before the Honorable Christopher Modelewski, Justice of the Supreme Court, on February 19, 2025 at 11:45 a.m., to be held at Courtroom 203 of the Supreme Court of Suffolk County, located at One Court Street, Riverhead, New York 11901.

The instant matter is a putative class action suit alleging illegal wage practices directed at a class of employees engaged in the provision of various services at nursing homes/congregate care facilities operated by the defendant. Before the Court is a motion for an Order granting preliminary approval of the negotiated settlement and release, the certification of the settlement class, appointment of the named plaintiff as the class representative, appointment of the law firm of Louis Ginsberg, PC as class counsel, approval of the named plaintiff's notice of proposed settlement of class action lawsuit and fairness hearing and claims form and directing distribution of the same, and scheduling a fairness hearing.

Article 9 of the CPLR, which sets forth the criteria for granting class action certification, is to be "liberally construed" (*Beller v William Penn Life Ins. Co. of N.Y.*, 37 AD3d 747, 748, 830 NYS2d 759 [2d Dept 2007]; *Jacobs v Macy's E., Inc.*, 17 AD3d 318, 319, 792 NYS2d 574 [2d Dept 2005]) in favor of granting class certification if all of the prerequisites of CPLR 901(a)(1) through (5) and CPLR 902(1) through (5) are met (*see Matter of Colt Indus. Shareholder Litig.*, 77 NY2d 185, 565 NYS2d 755

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[1991]; *Jenack v Goshen Operations, LLC*, 222 AD3d 36, 40, 199 NYS3d 542 [2d Dept 2023]; *Klein v Robert's Am. Gourmet Food, Inc.*, 28 AD3d 63, 808 NYS2d 766 [2d Dept 2006]; *Ackerman v Price Waterhouse*, 252 AD2d 179, 683 NYS2d 179 [1st Dept 1998]). The determination to grant class action certification rests “within the sound discretion of the trial court” (*Jenack v Goshen Operations, LLC*, 222 AD3d 36, 40, 199 NYS3d 542 [2d Dept 2023]; *Dowd v Alliance Mortg. Co.*, 74 AD3d 867, 903 NYS2d 104 [2d Dept 2010][internal quotations and citations omitted]).

“The prerequisites articulated in CPLR 901(a) include proof that the proposed class is so numerous that joinder of all members is impracticable, that common questions of law and fact applicable to the class predominate over questions affecting only individual members, that claims or defenses of the representative parties are typical of the claims or defenses of the class, and that the class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

(*Global Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 871 NYS2d 263 [2d Dept 2008]).

### Preliminary Approval of Settlement

At the outset, this Court must make an initial evaluation of whether the proposed settlement “is fair, adequate, reasonable, and in the best interest of class members” (*Klein v Robert's Am. Gourmet Food, Inc.*, 28 AD3d at 73, 808 NYS2d 766; see *Matter of Traffic Exec. Assoc.-Eastern R.R.*, 627 F.2d 631, 634 [2d Cir 1980]).

“Where, as here, the action is primarily one for the recovery of money damages, determining the adequacy of a proposed settlement generally involves balancing the value of that settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation”

(*Klein v Robert's Am. Gourmet Food, Inc.*, 28 AD3d at 73).

In light of the period of time covered by the proposed settlement agreement (dating to 2016), and on the submissions now before the Court, it appears that the lump sum fund set forth in the settlement agreement fairly and adequately compensates the class members for their unpaid wages, and is in their overall best interest.

### Conditional Certification of the Proposed Settlement Class

On the record before the Court at this time, it appears to the Court that this action satisfies all of the prerequisites of CPLR 901, and that consideration of the CPLR 902 factors support certification for purposes of settlement.

The Court provisionally certifies the following class under Article 9 of the CPLR, for settlement purposes only (“Settlement Class”).

All current and former non-exempt hourly paid coworkers of Defendant in the State of New York, who are or were employed by Defendant at any time from January 5, 2016 through the date of Preliminary Approval.

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### **Appointment of Named Plaintiff's Counsel as Class Counsel**

The Court appoints Louis Ginsberg, Esq. of the Law Firm of Louis Ginsberg, P.C. as Class Counsel because based upon the record before the Court, it appears they did substantial work identifying, investigating, litigating, and settling the named plaintiffs' and the class members' claims, have experience prosecuting and settling wage and hour class actions, and are well-versed in wage and hour law and in class action law.

Based upon the record before the Court, it appears that the work that the Law Firm of Louis Ginsberg, P.C. has performed both in litigating and settling this case demonstrates their commitment to the class and to representing the interests of class members.

### **Appointment of the Named Plaintiff**

The Court appoints Named Plaintiff Latoya Hall as the class representative.

### **Class Notice and Claims Form**

The Court approves the proposed Named Plaintiff's Notice of Proposed Settlement of Class action Lawsuit and Fairness Hearing ("Class Notice") and Claims Form, attached as Exhibit B to the Ginsberg Declaration, and directs its distribution to the Class.

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."

The contents of the Class Notice complies with due process. The Class Notice describes the terms of the settlement, explains how class members can participate in the settlement and how class members can object or opt-out, informs the class about the allocation of attorneys' fees and costs, and provides specific information regarding the date, time, and place of the final approval hearing.

### **Class Action Settlement Procedure**

The Court hereby adopts the following settlement procedure:

Within 14 days after the Court issues its Order Granting Preliminary Approval, Defendant will provide both Class Counsel and the Settlement Claims Administrator with a list, in electronic form with the names, dates of employment and last known address of Named Plaintiff and all Class Members (the "Class List");

The Settlement Claims Administrator shall mail, via First Class United States mail, postage prepaid, the Notice of Class Members within 24 days after the entry of the Preliminary Approval Order by the Court;

Class Members will have 45 days from the date the Class Notice and Claims Form is initially mailed to file a Claims Form, opt out of or object to the settlement ("Notice

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Period"). To be effective, the Claims Form, objection or opt-out must be received by the Settlement Claims Administrator within 45 days of the initial mailing of the Class Notice and Claims Form.

Named Plaintiff will file a Motion for Final Approval of Settlement no later than five (5) calendar days before the Fairness Hearing.

The Court will hold a final Fairness Hearing on **February 19, 2025 at 11:45 a.m.**, (which date is approximately 90 days after the date of this Order) at the Supreme Court of the State of New York, County of Suffolk, located at One Court Street, Riverhead, New York, 11901.

If the Court grants Named Plaintiff's Motion for Final Approval of the Settlement, the Court will issue an Order Granting Final Approval. If no party appeals the Court's Order Granting Final Approval, the "Final Effective Date" of settlement will be thirty (30) days after the Court enters its Order Granting Final Approval and the expiration of any appeal period.

If there is an appeal the latest of the following, if applicable, becomes the Final Effective Date: (1) any appeal from the Final Approval Order has been finally dismissed; (2) the Final Approval Order has been affirmed on appeal in a form substantially identical to the form of the Final Approval Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Approval Order in a form entered by the Court;

The Settlement Claims Administrator will pay the Class Members who timely file a Claims Form and who do not opt out, their individual settlement payments within thirty (30) days after the Final Effective Date;

The Settlement Claims Administrator will pay the Court-approved service payment to Named Plaintiff within thirty (30) days after the Final Effective Date;

The Settlement Claims Administrator will pay Class Counsel its Court-approved attorneys' fees and expenses within thirty (30) days after the motion for final approval is granted;

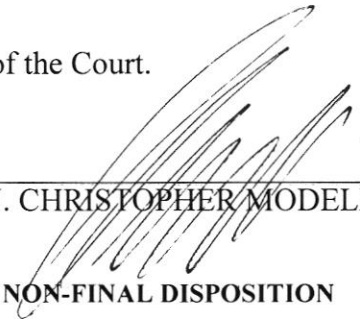
The Settlement Claims Administrator shall recover its agreed upon fees from the Settlement Amount. In the event that the Settlement Agreement is not finally approved, any fees and expenses of the Settlement Claims Administrator already spent or funds attributable to labor and/or expenses incurred but not yet paid shall be paid out of the QSF; and

The parties shall abide by all other terms of the Settlement Agreement.

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The foregoing constitutes the decision and Order of the Court.

Dated: November 14, 2024

  
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HON. CHRISTOPHER MODELEWSKI, J.S.C.

\_\_\_\_ FINAL DISPOSITION     NON-FINAL DISPOSITION