

SUPREME COURT: STATE OF NEW YORK
 COUNTY OF WESTCHESTER

 KUSHTRIM LAJQI,
 AND OTHERS SIMILARLY SITUATED

Plaintiffs,

-against-

BAR TACO PORT CHESTER, LLC,
 d/b/a "bartaco,"

Defendants.

**ORDER GRANTING
 FINAL APPROVAL OF
 CLASS SETTLEMENT**

Index No.: 68266/2017

THIS MATTER is before the Court on the Parties' Joint Motion for Final Approval of Class Certification and Final Settlement, following a hearing on April 30, 2020, hereby GRANTS the motion and finds and orders as follows:

1. On September 28, 2018, pursuant to §§ 901(a) and 902 of the New York Civil Procedure Law and Rules, this Court certified the following class ("the Class"):

Persons, like the named plaintiff, who were (a) exposed to Hepatitis A virus ("HAV") as a result of the consumption of food or drink, at a restaurant owned by the Defendant Bar Taco Port Hester, LLC "bartaco" restaurant located at 1 Willett Avenue, Port Chester, New York 13165, between October 12, 2017 and October 23, 2017, and (b) who, as a result of such exposure to HAV, obtained preventative medical treatment, including the administration of immune globulin HAV vaccine shots, or blood tests.

For purposes of settlement, the plaintiffs and defendant agreed that the Class shall be defined as follows:

All persons (a) who were potentially exposed to Hepatitis A virus ("HAV") as a result of the consumption of food or drink prepared at a restaurant owned by the Defendant Bar Taco Port Chester, LLC, known as "bartaco" restaurant, located at 1 Willett Avenue, Port Chester, New York 13165, between October 12, 2017 and October 23, 2017, and (b) who obtained a blood test, HAV vaccine, or immune globulin (IG) shot within 14 days after such potential exposure.

2. The Plaintiffs and Defendant have entered into a Settlement Agreement, subject to Court approval, including the documents and exhibits incorporated therein (together, the "Settlement Agreement", **Exhibit 1**), to settle the above-captioned litigation (the "litigation"). The Settlement Agreement sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the litigation.

3. On January 24, 2020, the Court granted preliminary approval of the class action Settlement Agreement ("Settlement") and appointed The Notice Company, Inc. as the "Settlement Administrator" in this case by its Order Approving the Joint Motion for Preliminary Class Settlement Approval ("Preliminary Approval Order").

4. In its January 24, 2020 Order, the Court approved the form of the proposed Class Action Claim Form ("Claim Form"), the Summary Notice of Settlement ("Summary Notice"), and the Detailed Notice of Settlement ("Detailed notice") as detailed in the Settlement Agreement and without material alteration. The forms of notice are attached as exhibits to the Affidavit of Joseph M. Fisher, included with this order as **Exhibit 2**. It also found that the Proposed Notice Plan met the requirements of New York law, was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice, was the best practicable notice, and was reasonably calculated under the circumstances to apprise members of the Class of the pendency of the Lawsuit and of the right to object to or to exclude themselves from the proposed settlement.

5. In accordance with the Proposed Notice Plan described in the Settlement Agreement, the Settlement Administrator provided notice to the class through direct mailing to known members of the class including persons identified by the Westchester County Department of Health and the New York State Department of Health (collectively, "DOH"), published notice in the *Westmore News*, *Greenwich Sentinel*, and online at www.westmorenews.com and

www.greenwichsentinel.com. A toll-free telephone line was established for person to call and learn about the proposed settlement, and a class website was created at www.portchesterhepa.com.

6. All notices stated that April 3, 2020 was the deadline to submit claim forms, to request exclusion from the Settlement or to file objections to the settlement. As of April 28, 2020, the Settlement Administrator received 720 claim forms consisting of 688 submitted on or before the deadline of April 3, 2020, and 32 claims submitted after the deadline. The Settlement Administrator reviewed all claim submissions and made the following determinations: (A) For timely claims, 681 claims for General Damages are acceptable, 24 claims for Special Damages are acceptable, and the status of 10 claims for Special Damages remains undetermined pending receipt of responses from those claimants. (B) For claims submitted after the deadline, 31 claims for General Damages are acceptable, 1 claim for Special Damages is acceptable, and the status of 1 claim for General Damages and 1 claim for Special Damages remain undetermined pending receipt of responses from those claimants.

7. The Court finds that the parties have agreed that any claims submitted through the date of this hearing shall be treated as timely and that the Settlement Administrator shall have an additional ten days from the date of this hearing to resolve and determine the status of the pending claims. The Settlement Administrator has calculated that the payout for all claims that are currently complete and acceptable, including General Damages and Special Damages, will be \$73,880.70. If all currently pending claims are resolved in favor of the amounts originally claimed, the calculated payout will be \$75,025.70.

8. A Final Approval Hearing was held on April 30, 2020 at 9:30 a.m. in the Westchester County Supreme Court, New York, before the undersigned for the purpose of determining: (a) whether the

proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; and (b) whether the issue a final judgment order.

9. The Court now finds that the proposed settlement is fair, reasonable, and adequate and consistent and in compliance with the applicable provisions of the laws of New York and the United States Constitution, as to, and in the best interests of, each of the Parties and the Class members. The Court directs the parties and their counsel to implement and consummate this Settlement Agreement and the proposed settlement according to its terms and provisions and declares this Settlement Agreement and the proposed settlement to be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings, maintained by or on behalf of, the plaintiffs and all other Class members, as well as their heirs, executors and administrators, successors and assigns.

10. The Court certifies the Class as defined below:

All persons (a) who were potentially exposed to Hepatitis A virus (“HAV”) as a result of the consumption of food or drink prepared at a restaurant owned by the Defendant Bar Taco Port Chester, LLC, known as “bartaco” restaurant, located at 1 Willett Avenue, Port Chester, New York 13165, between October 12, 2017 and October 23, 2017, and (b) who obtained a blood test, HAV vaccine, or immune globulin (IG) shot within 14 days after such potential exposure.

11. The Court finds that the plaintiff and plaintiffs’ counsel adequately represented the Class for purposes of entering into and implementing the Settlement.

12. The Litigation (including all individual claims and class claims presented thereby) is Dismissed on the merits and with prejudice, without an award of fees or costs except as provided in this Agreement.

13. All Class members and any individuals within the class definition as described above in paragraph 1 are barred and permanently enjoined from (a) filing, commencing,

prosecuting, intervening in, or participating (as Class members or otherwise) in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action within the scope of this Release, and (b) organizing Class members who have not been excluded from the Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action within the scope of the Release.

14. The Parties, without further approval from the Court, are hereby authorized to agree to and adopt such amendments, modifications, and expansions of this Agreement and all exhibits attached hereto as (a) shall be consistent in all material respects with the Final Approval Order, or (b) do not limit the rights of Class members.

15. The Defendant at its discretion, but in consultation with Plaintiffs' counsel and without approval from the Court, is authorized to implement the Settlement; and

16. Without affecting the finality of the Final Approval Order and Judgment for the purposes of appeal, the Court shall retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Agreement and the Final Approval Order, and for any other necessary purpose.

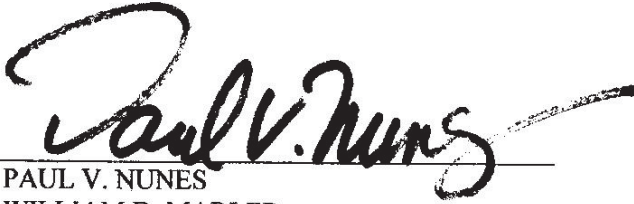
Dated this 30th day of April 2020.

APPROVED AND SO ORDERED:



The Honorable Terry Jane Ruderman
Supreme Court Justice

APPROVED AS TO FORM:



PAUL V. NUNES
WILLIAM D. MARLER
Attorneys for Plaintiff KUSHTRIM LAJQI,
individually and on behalf of all those similarly
situated

s/ Phillip A. Oswald

PHILLIP A. OSWALD
Attorney for Defendant BAR TACO PORT
CHESTER, LLC, and BARTECA
RESTURANTS, LLC