

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
KUSHTRIM LAJQI,
and Others Similarly Situated,

Plaintiffs,

-against-

DECISION
Motion Sequence No. 9
Index No. 68266/2017

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

Defendant.

-----X
RUDERMAN, J.

The following papers were considered in connection with the parties' joint motion for an order preliminarily approving the settlement of this class action:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits A - B, and Memorandum of Law	1

On October 25, 2017, the Westchester County Department of Health ("DOH") announced that customers who had consumed food or drink at defendant's "bartaco" restaurant located at 1 Willett Avenue in Port Chester, New York, between October 12, 2017 and October 23, 2017, had been exposed to the Hepatitis A virus through an infected restaurant employee. The DOH recommended that such individuals should receive preventive treatment against Hepatitis A, including prophylactic vaccination with either a Hepatitis A vaccine or immune-globulin, along with blood tests and other diagnostic procedures. Following the announcement, it is asserted,

approximately 3,000 persons, including the named plaintiff, obtained the recommended treatment. This class action lawsuit was commenced on October 31, 2017. The order certifying the class action was issued on September 28, 2018 (Hon. Gerald E. Loehr, J.)

The Settlement Agreement, for which the parties seek court approval, provides for the creation of a fund from which each qualified class member would receive general damages not exceeding \$100.00 per person as a pro rata share of an aggregate class amount of \$100,000.00, and special damages for out-of-pocket expenses from a fund of \$25,000.00, upon the submission of proper proof of such expenses, up to a pro rata share of the special damages fund. The Class Administrator would receive up to \$35,000.00 for notice and administration expenses. Plaintiff's counsel waived its fees and costs.

CPLR 908 requires court approval for the settlement of a class action. In general, a court reviewing a class action settlement must address 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 63, 73 [2d Dept 2006]). In reviewing a proposed settlement, a court should consider "the likelihood of success, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact" (*Klurfeld v Equity Enters.*, 79 AD2d 124, 133 [2d Dept 1981]). Application of these factors does not "follow a formulistic approach; rather, it is the circumstance of the case itself which should mold the approach of the court in deciding the weight to be accorded to each of the components" (*Klurfeld*, 79 AD2d at 133). "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*, 28 AD3d at 73).

Here, upon preliminary review, the proposed settlement appears to be a fair, adequate, and reasonable resolution of the claims. Experienced class counsel for both sides, and the class representative, view the proposed settlement as the most favorable outcome for all involved. It allows any person who would otherwise be a member of the class to exclude himself or herself from the class and from the settlement, so that an individual who claims to have suffered particular damages as a result of the Hepatitis A exposure at defendant’s restaurant may exclude himself or herself from the settlement, by mailing a written request for exclusion to the class administrator. It also allows any potential class member to object to the fairness, reasonableness, or adequacy of the proposed settlement. There is no evidence of bad faith. The history and length of the litigation show the lack of any collusion or coercion in negotiation of the proposed settlement; the parties have engaged in an arms-length bargaining process for almost two years to reach the settlement terms now agreed upon. There would be considerable expense in taking the complaint’s tort claims to trial, and the possible outcomes include a finding that the damages experienced by the class are insignificant, or even a finding of no liability.

CPLR 908 specifically requires that notice of a proposed settlement be given to all members of the class “in such manner as the court directs.” Adequate notice must, “at a minimum, inform[] all class members of the pending class action, the composition of the class, the issues between the parties, the terms of the proposed settlement, how a class member may object; the time period within which such objection, if any, must be made; and the date on which

the trial court will hold” the final settlement approval hearing (*Matter of Colt Indus. Shareholder Litig.*, 155 AD2d 154, 160 [1st Dept 1990]).

The submitted proposal is sufficiently comprehensive to accomplish the objective of providing notice to the class.

Accordingly, the joint motion for an order preliminarily approving the settlement of this Class Action is granted, and the Court approves, as a preliminary matter, the proposed settlement as fair, adequate, and reasonable, and the proposed Claim Form and Notice of Settlement to class members as reasonable and sufficient. The Notice Company, Inc. is appointed to serve as administrator of the the claims process and to distribute the proceeds. The final approval hearing is scheduled for April 30, 2020, at 9:30 a.m.

Order signed and filed herewith.

Dated: White Plains, New York
January 24, 2020


HON. TERRY JANE RUDERMAN, J.S.C.