



**EVELYN RYAN, on behalf of herself and all others similarly situated, Plaintiffs,
-against- VOLUME SERVICES AMERICA, INC. d/b/a CENTERPLATE, and
VOLUME SERVICES, INC., Defendants. Index No.: 652970/2012**

Index. No. 652970/2012

SUPREME COURT OF NEW YORK, NEW YORK COUNTY

2012 N.Y. Misc. LEXIS 5513

**December 6, 2012, Decided
December 7, 2012, Filed**

NOTICE: NOT APPROVED BY REPORTER OF DECISIONS FOR REPORTING IN STATE REPORTS.

JUDGES: [*1] Melvin L. Schweitzer, Justice.

OPINION BY: Melvin L. Schweitzer

OPINION

P1 ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT OF FITAPELLI & SCHAFFER, LLP AS CLASS COUNSEL, AND APPROVAL OF THE PROPOSED NOTICE OF SETTLEMENT AND CLASS ACTION PROCEDURE

The above-entitled matters came before the Court on Plaintiff's Motion for Preliminary Approval of Settlement, Conditional Certification of the Settlement Class, Appointment of Fitapelli & Schaffer, LLP as Class Counsel, and Approval of the Proposed Notice of Settlement and Class Action Settlement Procedure ("Motion for Preliminary Approval").

I. PRELIMINARY APPROVAL OF SETTLEMENT

1. Based upon the Court's review of the Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval of Settlement and the Affidavit of Brian Schaffer ("Schaffer Aff.") and the exhibits attached thereto, the Court grants preliminary approval of the settlement memorialized in the Joint Settlement and Release ("Settlement Agreement"), attached to the Schaffer Aff. as Exhibit A.

2. The Court concludes that the proposed Settlement Agreement is within the range of possible settlement approval, [*2] such that notice to the Class is appropriate.

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 and collective 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 supports conditional certification.

5. The Court provisionally certifies the following

class under Article 9 of the CPLR, for settlement purposes only ("Settlement Class"):

All MVP Servers and Runners who worked at Yankee Stadium in New York for at least twenty games between May 9, 2005 and December 31, 2008.

III. APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL

6. The Court appoints Fitapelli & Schaffer, LLP ("F&S") as Class Counsel because they did substantial work identifying, investigating, litigating, and settling Plaintiff's and the class members' claims, have years of experience prosecuting and settling wage and hour class actions, and are well-versed [*3] in wage and hour law and in class action law.

7. The work that F&S has performed both in litigating and settling this case demonstrates their commitment to the class and to representing the class's interests.

IV. CLASS NOTICE

8. The Court approves the proposed Notice of Settlement of Class Action Lawsuit and Fairness Hearing ("Notice"), attached as Exhibit B to the Schaffer Aff., and directs its distribution to the Class.

9. *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."

10. The content of the Notice fully complies with due process. The Notice describes the terms of the settlement, 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.

V. CLASS ACTION SETTLEMENT PROCEDURE

11. The Court hereby adopts the following settlement procedure:

a. Defendants shall deposit the entire Settlement Payment of \$750,000 in a Qualified Settlement Fund maintained

and/or controlled by the Claims Administrator no later than five days after the date of this Order;

b. Within five days [*4] of the date of this Order, Defendants shall provide the Claims Administrator with a list, in electronic form, of the names, last known addresses, last known telephone numbers, social security numbers, and dates of employment of all the putative Class Members (the "Class List");

c. The Claims Administrator shall mail the Notice to Class Members within 10 days of receiving the Class List;

d. Class Members will have 30 days from the date the Notice is mailed to opt out of the settlement or object to the settlement ("Notice Period");

e. Plaintiff will file a Motion for Final Approval of Settlement within 15 days of the fairness hearing;

f. The Court will hold a final fairness hearing on March 7, 2013 at 10:30 a.m., at Comm Div 45 Part, Room 215 at the Supreme Court of the State of New York, located at 60 Centre Street, New York, New York;

g. If the Court grants Plaintiff's Motion for Final Approval of the Settlement, the Court will issue a Final Order and Judgment. If no party appeals the Court's Final Order and Judgment, the "Effective Date" of the settlement will be 30 days after the Court enters its Final Order and Judgment.

h. If rehearing, reconsideration or appellate review is sought, [*5] the "Effective Date" shall be after any and all avenues of rehearing, reconsideration or appellate review have been exhausted and no further rehearing, reconsideration or appellate review is permitted, and the time for seeking such review has expired;

i. The Claims Administrator will disburse settlement checks to the Class Members, Court-approved attorneys' fees and costs, Court-approved Service Award to Plaintiff, and the Claims Administrator's fee within five days of the Effective Date; and

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

It is so ORDERED this 6 day of December, 2012.

/s/ Melvin L. Schweitzer

Justice