

STATE OF NEW YORK
SUPREME COURT: COUNTY OF SENECA

~~2019 JUN 21 P 3-12~~

CHRISTOPHER WELCH
AND OTHERS SIMILARLY SITUATED
Plaintiff,

Index No. 49796-2016

FINAL ORDER APPROVING
CLASS CERTIFICATION
AND CLASS SETTLEMENT

vs.

JASCOR, INC. d/b/a McDONALD'S
RESTAURANT,

Defendant.

This Court, having reviewed the Declaration of Joseph M. Fisher and all accompanying documents, finds and orders as follows.

1. On May 22, 2018, pursuant to §§901(a) and 902 of the New York Civil Procedure Law and Rules, this Court certified the following class ("the Class"):

All persons (1) who consumed food or drink products between October 31, 2015 and November 8, 2015 at a restaurant owned by Defendant Jascor, Inc., d/b/a McDonald's located at 2500 Mound Road, Waterloo, NY 13165; (2) who subsequently obtained blood test and immune globulin or Hepatitis A vaccine within 30 days of consuming products at the restaurant; and (3) did not afterwards become infected with the Hepatitis A virus.

2. For the purpose of settlement, the parties have agreed that the Class shall be defined as follows;

All persons (1) who consumed food or drink products between October 31, 2015 and November 8, 2015 purchased from the restaurant owned by Defendant Jascor, Inc., d/b/a McDonald's located at 2500 Mound Road, Waterloo, NY 13165; (2) who subsequently obtained a blood test, an immune globulin (IG) or Hepatitis A virus (HAV) vaccine within 14 days of consuming food or drink products between October 31, 2015 and

November 8, 2015 at the restaurant; and (3) did not afterwards become infected with the Hepatitis A virus.

To be a qualified claimant, class members were required to submit a declaration signed under penalty of perjury that the claimant is an individual defined as a class member. The Receipt of IG, HAV Vaccine, or blood tests was required to be shown through documentation and/or verification by the New York State Department of Health and/or the Seneca County Health Department. Claimants were required to show receipt of IG, HAV vaccine, or blood tests by providing documentation from a medical provider if the treatment was not provided by the New York State Department of Health and/or Seneca County Health Department. Claimants were also required to attest that they had not previously had HAV or previously received an HAV vaccine.

3. The plaintiff and defendant entered into a Settlement Agreement, including the documents and exhibits incorporated therein (together the "Settlement Agreement", Exhibit B to the Attorney Affirmation submitted by Paul V. Nunes dated and filed with the Court as of December 12, 2018), 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. The Settlement Agreement was negotiated at arm's length by counsel experienced in litigating and resolving class actions of this nature and is a fair and reasonable resolution of the case that will allow the class to avoid the risks inherent in any lawsuit as well as the delay of further litigation and potential appeal. Subsequent to the agreement, the parties filed an Order Approving Joint Motion for Preliminary Approval of Settlement which this Court granted January 8, 2019, as amended by the Court on February 21, 2019.

4. The Court appointed as Class Administrator:

The Notice Company, Inc.
94 Station Street
Hingham, MA 02043

Phone: (781) 740-1900
Fax: (781) 836-4297

5. In its February 21, 2019 Order, the Court approved the form of the proposed Class Action Claim Form (“Claim Form”), the Notice of Settlement to class members form (“Notice of Settlement”), and the Published Noticed of Settlement (“Published Notice of Settlement”) as detailed in the Settlement Agreement and without material alteration. The forms of notice are attached as exhibits to the Declaration of Joseph M. Fisher dated June 5, 2019, as filed with the Court. The Court 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 or to exclude themselves from the proposed settlement.

6. In accordance with the Proposed Notice Plan described in the Settlement Agreement, the Settlement Administrator provided notice to the class through direct mailings to known members of the class including persons identified by the Seneca County Health Department and the New York State Department of Health, published notice in *The Finger Lakes Times* of Geneva, New York and online at the *Seneca Daily News*, and also established a toll-free telephone line and Settlement website. The deadline established to submit claims, exclusion requests, and objections to the proposed Settlement was set for May 2, 2019. The Declaration of Joseph M. Fisher dated June 5, 2019, reported that as of the 5th of June, 2019, the Settlement Administrator had received 1,165 claim forms, including 78 that were identified as duplicate submissions, 19 that were submitted after the submission deadline, 10 that were for deceased claimants, 15 that were incomplete, and 2 that were submitted by claimants identified by the Class Administrator as “repeat claimants” who had submitted claims in other class settlements involving Hepatitis-A

outbreaks in other jurisdictions. The Class Administrator recommended not accepting claims from these repeat claimants due to the fact that they had previously claimed treatment in other Hepatitis A class actions in Hawaii and Bronx, New York. Thus, the total number of valid, complete and timely submitted claims, as of June 5, 2019, was 1,050.

8. Joseph M. Fisher submitted a Supplemental Declaration dated June 11, 2019, as filed with the Court, which reported that of the 15 claim forms previously identified as incomplete, 4 had been completed and were deemed acceptable. Thus, as of June 12, 2019, there were 11 incomplete claim forms. The total number of valid, complete and timely submitted claims, as of June 5, 2019, was 1,054.

7. All 19 late claim forms were received by the Class Administrator within 12 days of the deadline, with some claimants informing the Class Administrator of personal hardships that caused the delayed submission of claims. At the recommendation of the Class Administrator and the parties, the Court accepts the 19 late claims as validly submitted and warranting inclusion in the total number of class members, thereby raising the total number of claims deemed accepted by the Court to 1,073.

8. Further, the Court authorizes the Class Administrator to continue receiving and reviewing claim submissions through the date of this Order, so that additional claims may be accepted by the Class Administrator if it finds that such claims are or have been completed to its satisfaction.

9. A Final Approval Hearing was held on June 18, 2019 at 2:00 p.m. in the Seneca 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 to issue a final judgment order.

10. 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.

11. The Court certifies the Class as defined below:

All persons (1) who consumed food or drink products between October 31, 2015 and November 8, 2015 purchased from the restaurant owned by Defendant Jascor, Inc., d/b/a McDonald's located at 2500 Mound Road, Waterloo, NY 13165; (2) who subsequently obtained a blood test, an immune globulin (IG) or Hepatitis A virus (HAV) vaccine within 14 days of consuming food or drink products between October 31, 2015 and November 8, 2015 at the restaurant; and (3) did not afterwards become infected with the Hepatitis A virus.

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

13. 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.

14. All Class members 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. This prohibition does not affect any claims involving the development of a Hepatitis A infection and illness arising out of the same circumstances.

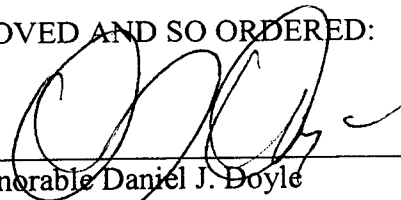
15. The Parties, without further approval from the Court, are hereby authorized to agree to and adopt such amendments, modifications, and expansions of this Agreement and all exhibits attached hereto as (a) shall be consistent in all material respects with the Final Approval Order, or (b) do not limit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

16. The Defendants at their discretion, but in consultation with Plaintiffs' counsel and without approval from the Court, are authorized to implement the Settlement; and

17. 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 18th day of June, 2019

APPROVED AND SO ORDERED:



The Honorable Daniel J. Doyle
Supreme Court Justice

APPROVED AS TO FORM:

 6/18/19

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

 6/18/19

CHERYL A. POSSENTI
Attorney for Defendant JASCOR, INC. dba
McDONALD'S RESTAURANT