DOCKET NO. X10-UWY-CV-22-6068623-S	:	SUPERIOR COURT
LATASHA HARRIS, ET AL	:	COMPLEX LITIGATION DOCKET
v.	:	AT WATERBURY
THE RELATED COMPANIES, INC., ET AL	:	NOVEMBER 6, 2024

FINDINGS, CONCLUSIONS AND ORDER CONCERNING PROPOSED CLASS ACTION SETTLEMENT

On July 2, 2024, the Court held a hearing on the Plaintiffs' Motion for Final Approval of Class Action Settlement (# 152). Following the hearing, the Court entered an order granting final approval (# 154). **These findings and conclusions** detail the bases for that order.[1]

This class action, filed in December 2022, was brought on behalf of former and current residents of the Branford Manor housing complex in Groton, Connecticut. The named plaintiffs claimed that as a result of conditions on the premises during the time period of November 2019 through November 2022 they and the members of the putative class suffered physical and emotional injuries, loss of personal property, and other losses.

[1] Capitalized terms used herein shall have the meaning ascribed to theme in the Stipulation of Settlement (# 131) unless otherwise defined.

This Court has presided over this lawsuit after it was transferred to the complex litigation docket on December 27, 2022. The parties entered into a mediation process that was serious, extensive, and conducted at arm's-length. The parties resolved this case through negotiations in the mediation process. The mediation process included written submission and joint and individual sessions with an experienced mediator. Ultimately, the mediation process resulted in the filing of the Motion for Preliminary Approval of Settlement (# 130.00), which the Court preliminarily approved on February 27, 2024 (# 130.10).

Practice Book § 9-9(c)(1)(C) provides that the "court may approve a settlement . . . that would bind class members only after a hearing and on finding that the settlement . . . is fair, adequate and reasonable." The standard is the same in federal court. Fed. R. Civ. P. 23(e)(2). In light of the similarity in language between the state and federal rules and the relative paucity of authority in Connecticut regarding class actions, our courts look to federal cases for guidance. *Artie's Auto Body, Inc. v. Hartford Fire Ins. Co.*, 287 Conn. 208, 214-15, 947 A.2d 320 (2008). Consequently, the Court has relied upon federal caselaw and the procedural and substantive factors codified in Fed. R. Civ. P. 23(e)(2) in analyzing the Motion for Preliminary Approval of Settlement (# 130) and Motion for Final Approval of Settlement (# 152). At the final approval stage, the Court must also determine whether the requirements for class certification set forth in Practice Book §§ 9-7 and 9-8 have been met and the Court then must define and certify the settlement class and determine that the notice provided to class member met the requirements of Practice Book § 9-9(a)(2)(B).

I.

The Second Circuit explained that a "court determines a settlement's fairness by looking at both the settlement's terms and the negotiating process leading to settlement. A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery. We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005), *cert. denied*, 544 U.S. 1044, 125 S.Ct. 2277, 161 L.Ed. 2d 1080 (2005) (citations omitted; internal quotation marks omitted). "The [c]ourt must exercise its discretion to approve or reject a settlement in light of the general judicial policy favoring settlement. Nonetheless, the policy favoring settlements generally will not substitute for rigorous scrutiny of this settlement. [T]he [c]ourt must serve as a fiduciary to protect the interests of absent class members affected by the settlement. . . ." *In re Citigroup Securities Litigation*, 965 F. Supp. 2d 369, 380 (S.D.N.Y. 2013) (citations omitted; internal quotation marks omitted).

"Courts in the Second Circuit have traditionally considered nine factors, known as the *Grinnell* factors, to assist in weighing final approval and determining whether a settlement is substantively 'fair, reasonable, and adequate.' These factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement

fund to a possible recovery in light of all the attendant risks of litigation." *In re. Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019), citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds* by *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000).

As with Fed. R. Civ. P. 23(e)(2), this Court must consider whether "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3) ; and (D) [whether] the proposal treats class members equitably relative to each other." "Paragraphs (A) and (B) [of Fed. R. Civ. P. 23(e)(2)] constitute the 'procedural' analysis factors, and examine the conduct of the litigation and of the negotiations leading up to the proposed settlement. Paragraphs (C) and (D) constitute the 'substantive' analysis factors, and examine [t]he relief that the settlement is expected to provide to class members." *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, 330 F.R.D. at 29 (noting "significant overlap between the *Grinnell* factors and the Rule 23(e)(2)(C)-(D) factors, as they both guide a court's substantive, as opposed to procedural, analysis") (citation omitted; internal quotation marks omitted). "The factors set forth in Rule 23(e)(2) have been applied in tandem with the Second Circuit's *Grinnell* factors and focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *In re Namend Direct Purchaser Antitrust Litigation*, 462 F. Supp. 3d 307, 311 (S.D.N.Y. 2020) (internal quotation marks omitted).

A.

The Rule 23(e)(2) procedural factors address both the nature and quality of the negotiations and whether the class was adequately represented by the class representatives and class counsel. The latter factor overlaps with the requirement of Practice Book § 9-7(4) that the "representative parties will fairly and adequately protect the interests of the class." The Court incorporates the findings it made regarding the procedural factors in the Preliminary Approval of Settlement (# 130) at pages 5-6. The Settlement Agreement is the result of extensive arm's-length negotiations conducted by highly experienced counsel with the assistance of a highly experienced mediator. Equally important, the class representatives clearly have "common interests with unnamed class members" and have "vigorously prosecute[d] the class action through qualified counsel." *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 326, 880 A.2d 106, 116 (2005) (*Collins II*).

B.

The substantive factors address the equity and adequacy of the settlement's terms. All do not have to be satisfied. "[R]ather, a court should look at the totality of these factors in light of the particular circumstances." *Berni v. Barilla G. e R. Fratelli, S.p.A.*, 332 F.R.D. 14, 30 (E.D.N.Y., 2019), *rev'd on other grounds*, 964 F.3d 141 (2020).

The complexity, expense, and likely duration of the litigation and the risks of establishing both liability and damages are significant factors weighing in favor of approval of the Settlement Agreement. Plaintiffs' counsel further identifies these risks at pages 22-24 of the Motion for Preliminary Approval of Settlement (# 130). This settlement not only avoids these risks but assures that all eligible class member claimants will receive base payments upon the completion of a simple form, and that class members may seek enhanced payments for serious illness or injury, or

serious property damage. Cost-free lien resolution[2] and structured settlement mechanisms provide benefits that would otherwise not be available to the class members. Minor, incapable, and deceased class members receive the benefit of a trust mechanism designed to address the complexity and cost of the probate process required when such individuals obtain a damages award or settlement. Thus, all Settlement Fund monies will likely be distributed to eligible class member claimants. Further, the Court finds that the amount of the Settlement Fund, both for base payments and enhanced payments, is reasonable.

Given the complexity of this case, the likelihood that any individual class member could achieve a better outcome in a timely manner by pursuing individual litigation is exceedingly low. Since all class members will receive a damages award and have an opportunity to seek additional compensation through the enhanced payment mechanism, the Court concludes that the Settlement Agreement treats all class members equitably in relation to other similarly situated class members.

C.

Additionally, adequacy and fairness can be demonstrated by the reaction of the class to the settlement. Counsel for the putative class has represented to the Court that as of July 1, 2024, 1,054 of the 1,378 class members had submitted claim forms—over three quarters of the class. Notably, as of its most recent report the Settlement Administrator reported that it was not aware of any exclusion requests ("opt-outs") or objections to the Settlement Agreement, and in fact the Court docket reflects that no objections were filed as of the June 10, 2024 Opt-Out or Objection Deadline or thereafter.

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[2] There remains a disagreement with regards to the State's claims for reimbursement from the Enhanced Payment Fund.

"It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy. In fact, the lack of objections may well evidence the fairness of the Settlement." *In re MetLife Demutualization Litigation*, 689 F.Supp.2d 297, 333 (E.D.N.Y. 2010) (citation omitted; internal quotation marks omitted). "A favorable reception by the class constitutes strong evidence that a proposed settlement is fair." *In re Citigroup Inc. Securities Litigation*, 965 F.Supp.2d at 382 (internal quotation marks omitted).

For all the reasons set forth in this subsection and in subsections I. A and I. B, *supra*, the Court finds that the Settlement Agreement is fair, adequate, and reasonable and satisfies the requirements of Practice Book § 9-9(c)(1)(C).

II.

Practice Book §§ 9-7 and 9-8 govern class certification. The prerequisites for class certification are set forth in § 9-7. "One or more members of a class may sue . . . as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims . . . of the representative parties are typical of the claims . . . of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." These four elements are referred to by the shorthand terms "numerosity," "commonality," "typicality" and "adequacy of representation." Practice Book § 9-8(3) sets forth the requirements that must be met to maintain a class action if the court concludes that the § 9-7 prerequisites have been satisfied. That section requires the court to find that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." These requirements are referred

to by the shorthand terms "predominance" and "superiority."

The Court finds that the numerosity requirement of § 9-7(1) is satisfied. The class consists of approximately 1,378 authorized tenants residing at Branford Manor during the relevant time period. Plaintiffs' counsel informed the Court at the final approval hearing that as of July 1, 2024, the Settlement Administrator had received 1,054 claims. Based on these numbers, clearly "joinder of all members is impracticable." Practice Book § 9-7(1).

The Court finds that the commonality requirement of § 9-7(2) is satisfied. To satisfy the commonality requirement "there need only be one question common to the class." *Collins II,* 275 Conn. at 323. It is a "settled principle" that commonality requires only one common question which advances the resolution of the litigation. *Standard Petroleum Co. v. Faugno Acquisition, LLC*, 330 Conn. 40, 54, 191 A.3d 147, 160 (2018). In this case, the class members' claims arise from allegations that the defendants' management of the Branford Manor housing complex resulted in injurious conditions. If litigated, there would be common questions of fact and law regarding the defendants' control over the management of the complex, the applicable liability standards, causation, and injury.

The Court finds that the typicality requirement of § 9-7(3) is satisfied. This requirement "is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 34, 836 A.2d 1124, 1140 (2003) (*Collins I*) (internal quotation marks omitted). Thus, "commonality and typicality . . . tend to merge." *Id.* at 33 (internal quotation marks omitted). When, as here, class members share central disputed issues of fact and law, typicality is not defeated even if there may be "minor variations in the fact patterns underlying individual claims." *Robidoux v. Celani*, 987 F.2d 931, 937 (2d Cir. 1993).

The Court finds that the adequacy requirement of § 9-7(4) is satisfied. The Court has already found that the class representatives' interests are common with the class. *See* I. A., *supra.* There has been no evidence presented that the named plaintiffs have any conflict of interest with the class members. To the contrary, throughout this litigation the named plaintiffs have pursued the common claims fairly with vigor and with the assistance of qualified counsel resulting in a settlement agreement which the court has already found to be fair, reasonable and adequate.

Having found that the Practice Book § 9-7 prerequisites are satisfied, the Court further finds that the predominance and superiority requirements of Practice Book § 9-8(3) are met. The predominance and superiority requirements of Practice Book § 9-8 are "intertwined . . . . Once predominance is determined, considerations of superiority and manageability should fall into their logical place." *Collins II*, 275 Conn. at 347 (citations omitted; internal quotation marks omitted).

The "fundamental purpose of the predominance inquiry is to determine whether the economies of class action certification can be achieved . . . without sacrificing procedural fairness or bringing about other undesirable results." *Id.* at 329. The "predominance requirement also tests whether the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Collins I*, 266 Conn. at 50 (citation omitted; internal quotation marks omitted). Predominance is not defeated by the presence of claims for individualized damages. *Collins II*, 275 Conn. at 330-31.

"[C]lass-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Standard Petroleum Co.*, 330 Conn. at 60. The Court has undertaken a rigorous review of the causes of action alleged in the complaint and concludes that this test is met.

Finally, the Court finds that "that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Practice Book § 9-8(3). "Whether a class action is superior to other available methods for fairly and efficiently adjudicating the controversy is an explicitly comparative inquiry, requiring the court to consider alternatives to class settlement." *In re GSE Bonds Antitrust Litigation*, 414 F. Supp.3d 686, 702 (S.D.N.Y. 2019) (internal quotation marks omitted; citation omitted). The course of this litigation to date demonstrates the effectiveness of "the litigating power of groups of plaintiffs who might not otherwise find [individualized] litigation economical" or feasible. *Id.* In the absence of a class action, it is unlikely that the individual low income present and former residents of the Branford Manor housing complex could have mustered the resources necessary to litigate the complex claims in this case.

III.

Having found the requirements for class certification set forth in Practice Book §§ 9-7 and 9-8 have been met, the Court states its definition and certification of the settlement class: All persons who lived at the Branford Manor housing complex in Groton, Connecticut as authorized residents during all or part of the three-year period running from November 23, 2019 through November 22, 2022.

The Court finds that the notice given to the Settlement Class was fair, reasonable, and adequate and meets the requirements of Practice Book § 9-9(a)(2)(B). This finding is based on the Declaration of JND Claims Administration from June 6, 2024. The Court finds that the notice program satisfied due process and § 9-9 (a)(2)(B). The Settlement Administrator's successful dissemination of the approved notice, the additional outreach which class counsel undertook

following the preliminary approval of the Settlement Agreement, the large number of claims filed, and the absence of opt-outs and objections reinforce the Court's conclusion that notice was robust and that prospective class members were fairly apprised of the terms of the settlement, its binding nature, and their options to participate, object, or opt-out.

IV.

Based on the foregoing, the Court enters the following additional orders:

1. The Settlement Agreement is approved. All Class Members are bound by the terms of the Settlement Agreement.
2. The Court approves JND Legal Administration ("JND") as the Settlement Administrator. The Settlement Consideration shall be deposited into an escrow account established by JND pursuant to Section 468B of the Internal Revenue Code for distribution to the Class Members and Class Counsel in accordance with Section 2 of the Settlement Agreement.
3. The Settlement Agreement fully, finally and conclusively resolves all claims, rights, and defenses in the action of all Class Members and, as a result, all Class Members are permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit in any state, territorial or federal court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction, which asserts claims based on or in any way related to the Settled Claims. The Court shall retain exclusive continuing jurisdiction to enforce the foregoing injunction.
4. The Court approves Class Counsel Fees of $2,695,000. All funds in the Settlement Fund not paid for administrative fees and approved Class Counsel fees shall be placed

into the Enhanced Payment Fund to fund Enhanced Payments to eligible Class Members pursuant to the terms of the Settlement Agreement.

5. The parties shall advise the Court when the allocation of the Settlement Funds has been completed and all settlement awards have been paid to eligible Class Members.
6. The Court retains jurisdiction to the extent necessary to implement, effectuate, and administer the settlement and the Court's final approval orders.

For the reasons set forth above, the motion is GRANTED.

So ordered this 6th day of November, 2024.

PIERSON, J.