

**Vizcaino v Ritz Carlton Hotel Co., L.L.C.**

2020 NY Slip Op 34465(U)

May 27, 2020

Supreme Court, Suffolk County

Docket Number: 607281-2016

Judge: John H. Rouse

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This opinion is uncorrected and not selected for official publication.

Index Number: 607281-2016

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART I2 - SUFFOLK COUNTY**

**PRESENT:**

HON. JOHN H. ROUSE, ACTING J.S.C.

*e-filed full participation*

Diana Vizcaino individually and on behalf of others  
similarly situated,

Plaintiffs

**DECISION AND ORDER**

-against-

The Ritz Carlton Hotel Company, L.L.C. d/b/a RITZ-  
CARLTON WESTCHESTER, Renaissance Hotel Partners,  
Llc, Louis R. Cappelli,

Defendants

**TO:**

LEEDS BROWN LAW, P.C.  
1 OLD COUNTRY RD, STE 347  
CARLE PLACE, NY 11514  
516-873-9550

LITTLER MENDELSON, P.C.  
290 BROADHOLLOW RD., STE 305  
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STEPHEN L. O'BRIEN, ESQ.  
REFEREE  
O'BRIEN & O'BRIEN LLP LAW OFFICES  
168 SMITHTOWN BLVD  
NESCONSET, NY 11767  
631-265-6660

**FINAL ORDER APPROVING SETTLEMENT**

1. Pursuant to New York Civil Practice Law and Rules §§ 901, 902, 904 and 908, the parties have jointly agreed upon and submitted an order approving settlement in the above entitled action ("the Lawsuit") in accordance with a Settlement Agreement and Release (the "Agreement"), which sets forth the terms and conditions for the settlement of the Lawsuit against Defendants and for dismissal of the Lawsuit against Defendants with prejudice upon the terms

and conditions set forth therein, and approval of the associated fees and costs (including, but not limited to, Class Counsel's attorneys' fees, Named Plaintiffs' Shares, and settlement claims administrator's costs and expenses) and the Court has read and considered the Agreement (Doc. No. 90), the Referee's Report of Mr. Stephen L. O'Brien, Esq. (Doc. No. 103), the Affirmation of Michael A. Tompkins, Esq., dated May 26, 2020 (Doc. No. 88), and exhibits attached thereto.

2. On March 6, 2019, this Court issued a decision and order ("Preliminary Approval Order") preliminarily approving the proposed Settlement Agreement and providing for notice of the settlement to the class. Pursuant to CPLR § 907(2), this Court also scheduled a Fairness Hearing for August 14, 2019, to further discuss the terms of the settlement and to provide an opportunity for any objections to be heard.

3. Based on the foregoing, and upon all the evidence and arguments presented thus far, and upon the Court's findings and conclusions thus far, including the finding detailed in the Referee's Report and those presented at the conference scheduled for Aug. 14, 2019, the proposed class action settlement is approved as fair and reasonable. This Court is satisfied that the proposed settlement in this action meets both procedural and substantive fairness.

IT IS HEREBY ORDERED, that this Court has jurisdiction over the subject matter of this litigation, and over all parties to this litigation, including all members of the class.

FURTHER, that for purposes of this ORDER, all terms not otherwise defined herein shall have the same meanings set forth in the Agreement; and

FURTHER, the Court certifies the following class under New York Civil Practice Law and Rules §§ 901 and 902, for settlement purposes ("Settlement Class"):

All individuals who performed work as servers, attendants, bussers, banquet housepersons, bartenders, food runners, captains, or in related service positions at the Ritz-Carlton Westchester hotel's catered and banquet events from May 2010 to March 6, 2019 and are identified on the Class List as having received service charge earnings during the Relevant Period.

The Settlement Class does not include maintenance workers, corporate officers, salespersons, cooks, food preparers, chefs, dishwashers, directors, clerical staff, officer workers or any other person whose trade, classification or profession does not customarily receive gratuities and/or service charges, which the Named Plaintiff and Defendant agrees are not subject to the claims asserted in the Action; and

FURTHER, that this Court hereby approves the settlement set forth in the Agreement and finds that the settlement is, in all respects, fair, reasonable, adequate and in the best interests of the Plaintiff and the class members in accordance with New York Civil Practice Law and Rules §§ 901 and 902 and directs implementation of all its terms and provisions; and

FURTHER, this Court incorporates and approves the findings made in the Referee's Report

as filed as Doc. No. 103 and approves the Referee's request for compensation from the Final Settlement Amount in the amount of \$9,590.00 for services rendered as part of the Settlement processes, as detailed in Doc. No. 102; and

FURTHER, that Plaintiff and Class Members who have not properly and timely exercised their opt-out rights in this lawsuit are hereby conclusively deemed to have released or discharged Defendants from, and are permanently enjoined and barred from asserting, either directly or indirectly, against Defendants – specifically THE RITZ CARLTON HOTEL COMPANY, L.L.C. d/b/a RITZ-CARLTON WESTCHESTER; RENAISSANCE HOTEL PARTNERS, LLC; LOUIS R. CAPPELLI -- any and all claims released in the Settlement Agreement – except to enforce the terms of the Agreement; and

FURTHER, that the notice given to the members of the class fully and accurately informed the members of the class of the proposed settlement, was the best notice practicable under the circumstances, and constituted valid, due and sufficient notice to all members of the class complying fully with CPLR § 908; and

FURTHER, the Court recognizes that the conditions for terminating the Agreement pursuant to Section 2.10(A) of the Agreement were met, but that pursuant to Section 2.10(A) of the Agreement, the Parties met and conferred. As a result, Plaintiffs' agreed to reduce the amount of the Final Settlement Amount that Defendant would have to remit to the Qualified Settlement Fund to \$467,000 and Defendant agreed to make such payment to satisfy its obligations under the Agreement. Defendants shall fund the Qualified Settlement Fund, with a maximum payment of \$467,000 which shall be used to satisfy all payments for Authorized Claimants, attorneys' fees and expenses, Named Plaintiffs' Service Award, the fees owed to the Referee, and other amounts provided for in the Agreement and as detailed in the Settlement Claims Administrator Affirmation, and such payment shall be made in accordance with the terms of the Settlement Agreement; and

FURTHER, Class Counsel's fees, costs and expenses are deemed reasonable and fair considering the time, effort, and result achieved in this Settlement for Plaintiffs, and the Claims Administrator is directed to make such payments in accordance with the Affirmation of Michael A. Tompkins, Esq. and the Agreement to the requisite individuals and entities regarding such fees, costs, and expenses, including Special Referee Stephen L. O'Brien, Esq.; and

FURTHER, that the Settlement Claims Administrator is directed to distribute settlement funds to the class members, including the Named Plaintiffs' Service Awards, and also to satisfy all other incidental financial obligations with regard to the settlement amount from the Qualified Settlement Fund, all in accordance with the terms of the Settlement Agreement; and

FURTHER, all issues were otherwise resolved at the Fairness Hearing and in accordance with the order issued therein; and

FURTHER, that without affecting the finality of this judgment in any way, this Court hereby retains jurisdiction over consummation and performance of the Settlement Agreement; and

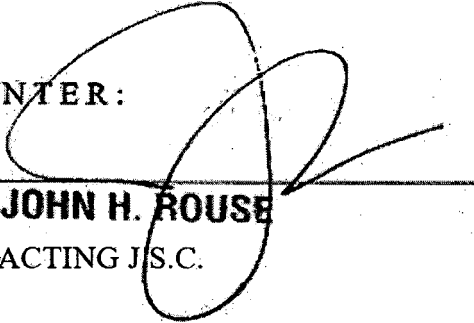
FURTHER, that Clerk of the Court will mark this case as settled and disposed.

The foregoing shall constitute the decision and order of the court.

***ENTER***

Dated: May 27, 2020

**ENTER:**

  
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**JOHN H. ROUSE**  
ACTING J.S.C.

FINAL DISPOSITION