UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:	Chapter 7
	Case No. 18-11217-MSH
NEW ENGLAND CONFECTIONARY COMPANY, INC.,	
Debtor	
DEXTER MAIN and FRANCESCO D'AMELIO, individually and on behalf of those similarly situated,	
Plaintiffs,	
	AP No. 18-01171-MSH
v.	
SWEETHEARTS CANDY CO. LLC and ROUND HILL INVESTMENTS LLC,	
Defendants.	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' ASSENTED-TO MOTION FOR PRELIMINARY APPROVAL OF CLASS AND OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statues:

Acts:

Pursuant to Fed. R. Civ. P. 23, plaintiffs Dexter Main and Francesco D'Amelio ("Plaintiffs") submit this Memorandum in Support of their Assented-To Motion for Preliminary Approval of Class and of Class Action Settlement ("Motion"). This is a prototypical class case – a claim by workers concerning a uniform company policy. Plaintiffs allege Defendants Sweethearts Candy Co. LLC (now named SCC Services LLC) and Round Hill Investments LLC ("Defendants") failed to provide proper notice of a plant closing pursuant to the Worker Adjustment and Retraining Notification Act (the "WARN Act"), 29 U.S.C. § 2101.

After extensive motion practice and settlement negotiations, the Plaintiffs and Defendants participated in a mediation before a sitting judge of the United States Bankruptcy Court for the District of Massachusetts – The Honorable Christopher J. Panos. The mediation resulted in a settlement (the "Settlement"). A copy of the Settlement is attached as Exhibit A to the Motion.

The Settlement is fair. The Settlement provides for a common fund of Seven Hundred Ninety Thousand Dollars and No Cents ($790,000.00). Plaintiffs' case had significant challenges, but the Settlement is expected to provide substantial relief to the Class. Notably, the Settlement is non-reversionary. Funds will be distributed pro rata to those who submit claim forms, with no funds reverting back to Defendants.

Upon preliminary approval of the Class and of the Settlement by the Court, the Class Notice and Claim Form can be issued by the third-party claims administrator. Those forms are attached as Exhibits B and C to the Motion.

Additionally, the Plaintiffs request the Court schedule a final approval hearing. At that hearing, Plaintiffs will report on the notice process, including the number of claims submitted, whether any Class members object to the Settlement, and whether any Class members have opted out of the Class and the Settlement. The Plaintiffs will then ask for final approval of the

Class and the Settlement, after which the funds can be distributed.

1. NATURE OF THE CASE

A. Factual Background

Plaintiffs allege the following. New England Confectionary Company, Inc. ("NECCO") produced candies in Revere, Massachusetts. Complaint ("Compl.") ¶ 7. Plaintiffs worked as mechanics for NECCO since 2014. In April of 2018, creditors of NECCO filed an involuntary bankruptcy petition. Compl. ¶ 8; SOF 3. Defendant Round Hill Investments LLC ("Round Hill") entered into an asset purchase agreement with the bankruptcy trustee of NECCO, which it later assigned to Sweethearts Candy Co. Compl. ¶ 12. Round Hill and the bankruptcy trustee also entered into a transition services agreement under which the bankruptcy trustee was to provide workers for the plant and be considered the employer. Compl. ¶ 16. On July 24, 2018, an announcement was made that production was being shut down and that the employees were terminated. Compl. ¶ 23. Defendants did not provide the employees advance notice of the plant's shutdown, nor did they provide the employees 60 days pay. Compl. ¶ 27.

B. Procedural History

This matter has been hard fought by both sides. Plaintiffs brought suit on July 27, 2018 (ECF #1), and filed an Amended Complaint on August 13, 2018. (ECF # 5). On September 6, 2018, Defendants filed a Motion to Dismiss. (ECF #11). Plaintiffs, on September 20, 2018, filed both an opposition to the Motion to Dismiss and their own Motion for Summary Judgment. The briefing on these motions is extensive. (ECF ##20 through 31). On November 15, 2018, the District Court ordered the case transferred to the Bankruptcy Court. (ECF ##32-34).

C. Arguments of the Parties

Defendants argue that the WARN Act does not apply to them because they purchased only the assets of NECCO from the bankruptcy trustee. Defendants argue that they were never employers of the workers, and therefore cannot be liable under the WARN Act. Defendants argue that pursuant to the asset purchase agreement and the transition services agreement, Defendants were not the employer.

Plaintiffs concede that generally only an employer is liable under the WARN Act. Plaintiffs instead rely on an exception within the WARN Act and the case law that, under certain circumstances, a purchaser can incur WARN liability where it purchases a business as a going concern. The Parties dispute whether that exception applies in this case.

2. THE TERMS OF THE SETTLEMENT

A. Settlement Class

The Class is defined as follows:

> "All (i) non-exempt individuals employed by Round Hill Investments LLC, Sweethearts Candy Co. LLC or New England Confectionary Company ("NECCO") at the NECCO facility in Revere Massachusetts at the time and within sixty 60 days prior to July 24, 2018, and whose employment was terminated by NECCO (as Debtor) on July 24, 2018 or within sixty (60) days before or after that date, including any such employees who were on an approved leave of absence as of July 24, 2018; (ii) exempt employees employed by Round Hill Investments LLC, Sweethearts Candy Co. LLC or NECCO at the NECCO facility in Revere Massachusetts at the time and within (sixty) 60 days prior to July 24, 2018, whose employment was terminated by NECCO (as Debtor) on July 24, 2018 or within sixty (60) days before or after that date and who did not have a retention agreement or retention arrangement with NECCO as Debtor or who chose to leave NECCO voluntarily when they did leave; and (iii) full-time seasonal employees employed by Round Hill Investments LLC, Sweethearts Candy Co. LLC or NECCO at the NECCO facility in Revere Massachusetts and who were on the NECCO payroll in 2018." Settlement, § 1.

In order to remove any doubt concerning who is, or is not, a Class member (and therefore who may be bound by the Agreement), a schedule of Class members is included in the Settlement. Id.

B. Identification and Notice to Class Members

Defendants will provide the most current mailing address available for each Class member. Id. § 4. A claims administrator will send the settlement notice and claim form packets by first class mail. Id. § 7. The claims administrator will send a reminder notice half-way through the claims period. Id. If any packets are returned as undeliverable, the administrator will perform a customary skip trace in an effort to obtain updated addresses. Id.

C. Class Notice

A copy of the Class notice documents is attached as Exhibits B and C to the Motion. The Class notice: outlines the nature of the case; provides the definition of the Class; describes the class claims and defenses; explains that a Class member may enter an appearance through an attorney; explains that a Class member may seek exclusion; describes how to request exclusion; and explains the binding effect of class judgment. The notice provides contact information for Class counsel and the administrator. Additionally, the claim form explains how a Class member's award will be calculated, including an estimate of the Class member's minimum award.

D. Payments

The total Settlement fund will be $790,000. Id. § 3. Defendants do not object to Class counsel's request for attorney fees and litigation expenses of one third (1/3) of the Settlement fund and to $10,000 incentive payments to the two named Plaintiffs. Id.

The Settlement provides that the remaining amount will be paid to those Class members

who submit claim forms based on a calculation designed to account for the varying likelihood of success of Class members. Id. Distributions to Class members in categories (i) and (ii) of the Class definition, will be based on an employee's regular rate of pay. Id. The rate of pay used for calculating the award to Class members in category (iii) of the Class definition will be 25% of their regular rate of pay. Such Class members were seasonal employees not employed within 60 days of the shutdown, with a significantly more difficult likelihood of success in this lawsuit.

The average award is expected to be approximately $1,500. In addition, as explained below, because the settlement is structured as a pro-rata fund, each Class member who does return a form is expected to receive a significantly greater award.

E. Pro-Rata Payment and Cy Pres Distribution

Significantly, none of the Settlement funds will flow back to Defendants. The payment will be on a pro-rata basis to those who submit claim forms. If fewer than all Class members submit claim forms, the amount distributed to each Class member will increase. Id. Given the typically low rates of return on class actions, the expectation is that each Class member who submits a claim will receive a substantial payment. There will be a dispute fund in order to address notices received late or other issues that may arise. Id. Any amounts remaining in the dispute fund, together with the funds from any Class members who submit claim forms but do not cash their check, will go to the IOLTA Committee, as recommended by Mass. R. Civ. P. 23(e); Id., at § 6. Again, no funds will revert back to Defendants.

3. THE CLASS SHOULD BE CERTIFIED

Rule 23(a) of the Federal Rules of Civil Procedure provides for class certification where: (1) the class is so numerous that joinder of all members is impracticable (numerosity), (2) there are common questions of law or fact common to the class (commonality), (3) the claims of the

representative parties are typical of the claims of the class (typicality), and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). Additionally, Rule 23(b) requires that (1) questions of law or fact common to the members of the class predominate over questions affecting only individual members (predominance), or (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy (superiority). Here, all these facts are easily met.

Finally, it bears emphasizing that in enacting the WARN Act, Congress specifically endorsed the application of the class device to for its enforcement. 29. U.S.C. § 2104(a)(5) (plaintiff may sue "for other persons similarly situated").

A. This Case Satisfies Rule 23(a)

1. Numerosity. Rule 23(a)(1) requires that a class be "so numerous that joinder … is impracticable." Fed. R. Civ. P. 23(a)(1). Courts generally hold that classes exceeding 40 people are too large for joinder. In re Relafen Antitrust Litig., 218 F.R.D. 337, 342 (D. Mass. 2003). Here, there are at least 326 Class members.

2. Commonality. Rule 23(a)(2) requires that "questions of law or fact" be "common to the class." Fed. R. Civ. P. 23(a)(2). This prerequisite "is not a difficult one to meet." In re Relafen Antitrust Litig., 218 F.R.D. at 337, 342. The "commonality requirement ordinarily is easily met" because it "does not require that class members' claims be identical;" rather, a "single common legal or factual issue can suffice." Payne v. Goodyear Tire & Rubber Co., 216 F.R.D. 21, 25 (D. Mass. 2003) (emphasis in original). "The commonality requirement is met where the questions that go to the heart of the elements of the cause of action will each be answered either 'yes' or 'no' for the entire class and the answers will not vary by individual class member." Garcia v. E.J. Amusements of N.H., Inc., 98 F. Supp.3d 277, 285 (D. Mass. 2015).

Commonality therefore exists where the claims arise out of a companywide practice that affects each employee in the same way. See Overka v. Am. Airlines, Inc., No. 08-10686, 2010 WL 517407, at *2 (D. Mass. Feb. 4, 2010) ("commonality requirement is usually satisfied" where "implementation of common scheme is alleged"). In this case, the class claims all depend on the same common question – whether Defendants have incurred WARN liability as purchasers of a going concern and provided adequate notice under the WARN Act. This question will not vary based on individual class members' circumstances.

3. Typicality. Rule 23(a)(3) provides that class certification is appropriate where the claims of the representative plaintiff are typical of the claims of the class as a whole. Fed. R. Civ. P. 23(a)(3). Typicality is "'not highly demanding' because 'the claims only need to share the same essential characteristics, and need not be identical." Payne, 216 F.R.D. at 24-25, quoting 5 Moore's General Practice § 23.24[4]. "For purposes of demonstrating typicality, '[a] sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." In re Relafen, 231 F.R.D. at 69, quoting In re Terazosin Hydrochloride Antitrust Litig., 231 F.R.D. 672, 686 (S.D. Fla. 2004). In this case, the named Plaintiffs' claims are exactly the same as those of the Class. Plaintiffs allege that they, together with the Class, failed to receive sufficient WARN notice.

4. Adequacy. Rule 23(a)(4) mandates that "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Two factors must be satisfied to fulfill this requirement: "(1) the absence of potential conflict between the named plaintiff and the class members and (2) that counsel chosen by the representative parties is qualified, experienced and able to vigorously conduct the proposed litigation." Adair v. Sorenson, 134 F.R.D. 13, 18 (D. Mass. 1991), quoting Andrews v. Bechtel Power Corp., 780

F.2d 124, 130 (1st Cir. 1985) (internal quotes omitted). In this case, there exists no conflict, or potential for conflict between the named Plaintiffs and the Class. The named Plaintiffs want the same thing as the Class – WARN pay. With respect to the adequacy of representation, as outlined in the accompanying affidavit of Josh Gardner, attached as Exhibit D to the Motion, he and attorney Nicholas Rosenberg, are well qualified and experienced in class action litigation, and their firm (Gardner & Rosenberg, P.C.) will continue to devote the resources necessary to vigorously conduct this litigation.

B. This Case Satisfies Rule 23(b)

1. Predominance. Predominance "does not require an entire universe of common issues," rather only "'a sufficient constellation' of them." In re Relafen, 231 F.R.D. at 70, quoting Waste Mgmt. Holdings, Inc. v. Mowbray, 208 F.3d 288, 298 (1st Cir. 2000). "A single, central issue as to the defendant's conduct vis-à-vis class members can satisfy the predominance requirement even when other elements of the claim require individualized proof." Payne, 216 F.R.D. at 26, quoting In re Prudential Ins. Co. of Am. Sales Pract., 148 F.3d 283, 314 (3d Cir. 1998). See Smilow v. Southwestern Bell Mobile Sys. Inc., 323 F3d 32, 40 (1st Cir. 2003) ("Where, as here, common questions predominate regarding liability, then courts generally find the predominance requirement to be satisfied even if individual damages issues remain."). In this case, there is one central common issue that predominates: are Defendants employers for the purposes of the WARN Act and did they provide adequate notice to the class?

2. Superiority. The superiority requirement is designed to ensure the "vindication of the rights of groups of people who individually would be without effective strength to bring their opponents to court at all." Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 617 (1997).

Here, the Class members are individuals who earned a modest wage for whom individual actions are not realistic or efficient. Indeed, prior to this lawsuit, many Class members likely were not aware of their claim. Moreover, absent a class action, the courts would be faced with the task of potentially litigating numerous lawsuits, and potentially arriving at contradictory conclusions. See Bernson v. Faneuil Hall, 100 F.R.D. 468, 471 (D. Mass. 1984) (class provides "not only economy which will benefit members of the class, but economy which will benefit the judicial system as well").

In sum, this is precisely the type of case that demands class treatment. Class members are employees of modest means and the facts and law apply equally to each of them. Class litigation is superior to individual actions.

5. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

A. The Proposed Settlement is Fair, Reasonable, and Adequate

A class settlement must be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). At the preliminary approval stage, a court should determine whether there is cause "to submit the [settlement] to class members" and hold a later hearing "as to its fairness." In re Traffic Executive Ass'n, 627 F.2d 631, 634 (2d Cir. 1980). See Herbert B. Newberg & Alba Conte, Newberg on Class Actions (4th Ed. 2002) § 11.25 (preliminary approval appropriate "if the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness … and appears to fall within the range of possible approval"). The overriding public interest favors settling class actions. See Durett v. Housing Auth. of Providence, 896 F.2d 600, 604 (1st Cir. 1990) ("clear policy in favor of encouraging settlements"). Courts find a presumption of fairness where "sufficient discovery has been provided and the parties have bargained at arms-

length." In re M3 Power Razor Sys. Marketing & Sales Practice Litig., 270 F.R.D. 45, 62-63 (D. Mass. 2010).

The 2018 Amendments to Fed. R. Civ. P. 23 identify the following factors in considering the fairness of a settlement:

> (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;
> (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) the proposal treats class members equitably relative to each other.
>
> Fed. R. Civ. P. 23 (e)(2).

1. The Settlement Amount Is Fair

In this case, the settlement amount is fair. First, the class representatives and class counsel have adequately represented the Class. Class counsel has litigated this matter vigorously. Indeed, Plaintiffs have engaged in extensive motion practice, including a motion for summary judgment.

Next, this settlement was negotiated at arm's length. Early settlement discussions had the parties far apart. It was only through the significant help of Judge Panos that the parties were able settle the matter. "The involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Fed.R. Civ. P. 23, 2018 Committee Notes. In this case, Judge Panos provided insight to both parties on the strengths and weaknesses of their respective positions. The Settlement is the direct result of that process.

Plaintiffs have considered the costs, risks, and delay of trial and appeal. Were this matter to proceed to trial, there is a good chance that Defendants would prevail. Indeed, Plaintiffs'

argument relies on fitting this case within an exception to the general rule that only employers must provide WARN notice.

The Settlement will avoid the undue delay attendant to further litigation. Indeed, Plaintiffs filed this case over a year ago. The WARN Act is designed to provide immediate assistance to those who are terminated without notice. The Settlement will serve this objective of assisting employees as soon as practicable. Most of members the Class are low wage earners. The sooner they can receive payment, the better.

Next, the method of distribution in this case is particularly well suited. The settlement is structured as a common fund, with no amount reverting to Defendants.

Finally, the structure of the settlement is designed to treat Class members equitably relative to one another. The distribution to the Class members with the strongest claim is based on their regular rate of pay. The Settlement, however, also provides for relief to seasonal workers who were not employed within sixty days of the shutdown. The distribution to these Class members is based on 25% of their regular rate of pay to account for their significantly less likelihood of success vis-e-vis those employed within the shutdown window. See e.g. Teamsters Local 838 v. Laidlaw Transit, Inc., 156 F.3d 854, 856 (8th Cir. 1998) (seasonal bus drivers not entitled to WARN notice more than 60 days prior to expected date of recall); Marques v. Telles Ranch, Inc., 131 F.3d 1331, 1335 (9th Cir. 1997) (seasonal employees did not suffer employment loss until time they reasonably could have been expected to be recalled to work, and therefore not entitled to WARN damages when plant closing provided more than 60 days notice before such date).

B. The Incentive Payments Are Reasonable

An incentive award to each named Plaintiff of $10,000 is fair. Incentive awards serve an important function in encouraging class suits and settlement. See In re Compact Disc., 292 F. 2d 184, 189 (D. Me. 2003) ("because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in a suit"); see In re Relafen Antitrust Litig., 231 F.R.D. 52, 82 (D. Mass. 2005) ("Incentive awards are recognized as serving an important function in promoting class action settlements") quoting In re Lupron, 228 F.R.D. 75, 98 (D. Mass. 2005).

Massachusetts federal courts routinely approve incentive awards far greater than that sought in this case.[1] Moreover, incentive awards are "particularly appropriate in the employment context" because "the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers." Frank v. Eastman Kodak Co., 228 F.R.D. 174, 187 (W.D.N.Y. 2005).

In this case, the named Plaintiffs served a significant function. They each met with class counsel and provided invaluable information necessary to prosecute the case. Indeed, without their willingness to serve as named Plaintiffs, there would be no case.

C. The Common Fund Allocation of Attorney Fees Is Fair

Next, the proposed one-third share for attorneys' fees and expenses is in an amount in line with the usual and customary practice in setting contingency fees, and in line with class

[1] See e.g. Gordon v. Mass. Mut. Life Ins. Co., No. 13-cv-30184 (D. Mass. Nov. 3, 2016) ($20,000); Matamoros v. Starbucks Corp., No. 08-10772 (D. Mass. 2013) ($25,000); DaSilva v. CleanNet USA Inc., No. 12-10580 (D. Mass. 2013) ($25,000); Abla v. Brinker Restaurant Corp., No. 10-10373 (D. Mass. 2011) ($15,000).

action practice generally. Indeed, when a class settlement produces a common fund, courts generally favor an award from the fund. See In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Lit., 56 F 3d 295, 307 (1st Cir. 1995) (percentage "method in common fund cases is the prevailing praxis"). As the First Circuit has observed, the percentage method is "less burdensome to administer" and it "enhances efficiency" because its "results-oriented" approach encourages attorneys to fairly resolve matters rather than prolong litigation in order to inflate their recoverable hours. Id. Massachusetts federal courts routinely approve fees representing one-third of the class recoveries.[2] Finally, courts recognize the benefit of contingency work such as this. See In re Union Carbide Corp. Consumer Products Business Sec. Litig., 724 F. Supp. 160 168 (S.D.N.Y. 1989) ("Contingent fee arrangements implicitly recognize the risk factor in litigation and that the winning cases must help pay for the losing ones if a lawyer who represents impecunious plaintiffs … will remain solvent and available to serve the public interest.").

Finally, insomuch as the Parties only seek preliminary approval at this time, the Court need not decide the appropriateness of the fees until the final approval hearing. Counsel will provide a detailed fee petition before such time.

D. The Class Notice is Reasonable

Notice by mail is reasonably calculated to reach potential Class members. Notice by first class mail to Class members identifiable by reasonable means is adequate notice. See Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 175 (1974) (mail notice preferable to publication notice); In

[2] See e,g, Matamoros v. Starbucks Corp., No. 08-10772 (D. Mass. 2013); Johnson v. Morton's Restaurant Gp., No. 05-11058 (D. Mass. 2009); Zeid v. Open Environment Corp., No. 96-12466 (D. Mass. June 24, 1999); In Re Copley Pharma., Inc. Sec. Litig., No. 94-11897 (D. Mass. Feb. 8, 1996).

re Compact Disc Minimum Advertised Price Antitrust Litig., 216 F.R.D. 197, 218 (D. Me. 2003) ("notice by first class mail ordinarily" sufficient).

In this case, first class mail is the most appropriate method of notice. Defendants are believed to have the current addresses of most employees. To the extent that any claim packets are returned as undeliverable because employees have moved since their employment, the administrator will use reasonable means to locate the employees. The administrator will use databases to skip trace outdated address and will promptly resend notices and claim forms to the updated addresses.

The contents of the notice must provide "class members with sufficient information to make an informed and intelligent decision about whether to file a claim … or object to the proposed settlement." In re Compact Disc., 216 F.R.D. at 204.

Here, the proposed Notice fully complies with the requirements of Fed. R. Civ. P. 23(c)(2)(B). The Notice includes the following information:

(i) The nature of the action;
(ii) The definition of the class certified;
(iii) The class claims, issues, or defenses;
(iv) That a class member may enter an appearance through an attorney if the member so desires;
(v) That the Court will exclude from the class any member who requests exclusion;
(vi) The time and manner for requesting exclusion;
(vii) The binding effect of a class judgment on the members.

In this case, the parties have structured the notice to conform to these requirements, and have also included additional information to ensure that class members fully understand the background and context of the proposed settlement.

6. GARDNER & ROSENBERG, P.C. SHOULD BE APPOINTED CLASS COUNSEL

Gardner & Rosenberg, P.C. should be appointed Class Counsel. Under Fed. R. Civ. P.

23(g), the court should consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). As attested to in the accompanying affidavit of Josh Gardner, attached as Exhibit D to the Motion, the law firm identified and investigated the claim. It has devoted significant resources to the extensive motion to dismiss and motion for summary judgment briefing. The firm regularly handles complex litigation, including sizeable employee class actions, and WARN Act claims. The firm has, and will continue to, devote significant resources to this case. Most importantly, in this case, the firm has succeeded in securing the sizeable Settlement.

Conclusion

For these reasons, with the assent of the Defendants, the Plaintiffs request that the Court preliminarily certify the Class; preliminarily approve the Settlement; approve the issuance of the proposed Class Notice and Claim Form; and appoint Plaintiffs as Class Representatives and Gardner & Rosenberg, P.C. as Class Counsel.

PLAINTIFFS,

/s/ Nicholas J. Rosenberg

Nicholas J. Rosenberg (BBO No. 657887)
Josh Gardner (BBO No. 657347)
GARDNER & ROSENBERG P.C.
1 State Street, 4th Floor
Boston, MA 02100
Tel: 617-390-7570
Fax: 617-972-7983
nick@gardnerrosenberg.com

Dated: November 4, 2019

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 4, 2019.

/s/ Nicholas J. Rosenberg