

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JACKIE BURKS; BRUNILDA PAGAN CRUZ;
VENUS CUADRADO, and RHONDA DRYE;
individually and on behalf of all persons similarly
situated,

Plaintiffs,

-against-

GOTHAM PROCESS, INC.; MULLOOLY,
JEFFERY, ROONEY & FLYNN, LLP; BASSEM
ELASHRAFI; and CARL BOUTON,

Defendants.

No. 20 Civ. 1001 (NRM) (PK)

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND
PROVISIONALLY CERTIFYING
SETTLEMENT CLASS**

NINA MORRISON, United States District Judge:

This matter comes before the Court on the motion of Plaintiffs Jackie Burks, Brunilda Pagan Cruz, and Venus Cuadrado (together, “Named Plaintiffs”), on behalf of themselves and putative Class Members, with the consent of Defendants Mullooly, Jeffery, Rooney & Flynn, LLP (“MJRF”), Bassem Elashrafi (“Elashrafi”), Carl Bouton (“Bouton”), and Gotham Process, Inc. (“Gotham,” and together with Elashrafi and Bouton, “Process Server Defendants”), for preliminary approval of both the Stipulation of Settlement and Release as to All Claims Against Defendant Mullooly, Jeffery, Rooney & Flynn, LLP (“MJRF Settlement”), dated May 2, 2023, and the Stipulation of Settlement and Release as to All Claims Against Defendants Gotham Process, Inc., Carl Bouton, and Bassem Elashrafi (“PSD Settlement,” and together with the MJRF Settlement, “the Settlement Agreements”), dated May 17, 2023, and related relief.

The Court held a Preliminary Approval Hearing on August 8, 2023.

NOW IT IS HEREBY ORDERED AS FOLLOWS:

1. Definitions. For the purposes of this Order, the Court adopts by reference the definitions set forth in the “Definitions” sections of the Settlement Agreements.
2. Certification of the Class. The Court provisionally finds that the proposed class meets the requirements set forth in Rules 23(a), 23(b)(2) and 23(b)(3), and hereby:
 - (a) Provisionally certifies under both Fed. R. Civ. P. 23(b)(2) and 23(b)(3), for purposes of the proposed Settlement only, pending a Fairness Hearing and further order of the Court, a class consisting of “All natural persons who have been sued by MJRF, on behalf of a Civil Action Plaintiff, in New York City Civil Court in Actions commenced on or after January 1, 2016, in which an affidavit of service has been filed, stating that Elashrafi or Bouton, on behalf of Gotham, effectuated service by delivering the papers to a person identified as a Relative of the person to be served”;
 - (b) For the purposes of the proposed Settlement, approves Jackie Burks, Brunilda Pagan Cruz, and Venus Cuadrado as Class Representatives; and
 - (c) For the purposes of the proposed Settlement, appoints the New York Legal Assistance Group as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g).
3. Preliminary Approval: The Court preliminarily approves the proposed Settlement as set forth in the Settlement Agreements as providing sufficiently fair, reasonable, and adequate relief to the Class, and finds that it is the result of intensive arms-length negotiations between experienced attorneys familiar with the legal and factual issues of this case. Specifically, the Court provisionally finds that:

- (a) The payment of a Gross Settlement Amount of a total of \$1,350,000— with \$750,000 contributed by MJRF and \$600,000 by the Process Server Defendants—is fair, reasonable, and adequate;
- (b) The non-monetary relief provided for in the Settlement Agreements, including that:
 - (i) MJRF will permanently cease all collections on all Actions;
 - (ii) MJRF, with the consent of the Civil Action Plaintiffs, will discontinue, vacate, or file satisfactions of Judgment in those Actions pursuant to the terms of the MJRF Settlement;
 - (iii) Elashrafi and Bouton will be permanently barred from serving process in all jurisdictions; and
 - (iv) MJRF and Gotham will make other practices changes; is fair, reasonable, and adequate, and provides valuable relief to the Class;
- (c) The Allocation Plan submitted by Class Counsel provides for distribution of payments to the Class in a manner that is fair, reasonable, and adequate;
- (d) Subject to further information to be provided by Class Counsel in connection with final approval of the Settlement, the anticipated payment to Class Counsel of Approved Attorney’s Fees of an amount to be specified, but which will not exceed \$450,000, is fair and reasonable; and
- (e) The anticipated Service Award payments of \$4,000 to each Named Plaintiff to account for their roles in litigating the Action are fair, reasonable and adequate.

4. Contribution of Gross Settlement Amount: The Court directs that:
 - (a) Within twenty-one (21) days of this Order, MJRF will deposit or cause to be deposited \$750,000 into the Class Settlement Account; and
 - (b) Within twenty-one (21) days of this Order, the Process Server Defendants' Counsel will deposit or cause to be deposited \$600,000 into the Class Settlement Account.
5. Class Administrator: The Court appoints Atticus Administration, LLC to serve as the Class Administrator, and approves the payment of up to \$34,000 in Administration Expenses from the Class Settlement Account.
6. Class Notice: The Court approves the form and content of the Individual Notices, attached as Exhibits 7 and 8 to the Declaration of Jessica Ranucci, as follows:
 - (a) The Court finds that the Individual Notices will fully and accurately inform potential Class Members of all material elements of the Settlement Agreements, the right to be excluded from the Class, and the right to object to the Settlement.
 - (b) No later than sixty (60) days prior to the Objection, Exclusion, and Claim Submission Deadline, the Class Administrator shall distribute the Individual Notices to all Class Members, and, by no later than that same date, shall cause a website to be established and post a copy of the Individual Notice on the website.
 - (c) The Court finds that the proposed plan to distribute notice, set forth at ¶¶ 59-60 of the Declaration of Jessica Ranucci, provides the best notice practicable under the circumstances, constitutes due and sufficient notice

to the Class, and complies with the requirements set forth under Federal Rule of Civil Procedure 23 and any other applicable law.

- (d) Class Counsel and the Class Administrator may make any ministerial amendments to or modifications to the Individual Notices, the notice plan, and the Allocation Plan without notice to or approval by the Court so long as such changes are not materially inconsistent with this Order and do not materially limit the rights of potential Class Members.
- (e) The Court expressly authorizes additional notice to be sent via text message and/or email, at Class Counsel's discretion.
- (f) To the extent Class Counsel and the Class Administrator make any non-ministerial changes to, or create text message or email versions of, the approved Notices, Class Counsel will provide the proposed Notices to counsel for MJRF and the Process Server Defendants at least forty-eight hours before sending, and all Counsel shall work in good faith to resolve any disagreements over those Notices.

7. Objections to Settlement: A Class Member who wishes to object to the proposed Settlement may do so by filing an objection as set forth below:

- (a) A Class Member who wishes to object must submit to the Class Administrator a written statement of reasons, including any legal support or evidentiary support, for his or her objection, postmarked or electronically submitted no later than the Objection, Exclusion, and Claim Submission Deadline.

- (b) The Objection, Exclusion, and Claim Submission Deadline shall be October 26, 2023 (twenty-one (21) days before the scheduled date of the Fairness Hearing).
- (c) An objection must include the name, title, and docket number of the Action, as well as the full name, address, telephone number, email address if available, and signature (including electronic signature) of the Class Member.
- (d) Class Members who intend to appear at the Fairness Hearing should so advise the Class Administrator in their written objection. If a Class Member retains counsel to appear on his or her behalf at the Fairness Hearing, such counsel must file with the Court and serve on Defendants Counsel and Class Counsel a notice of intention to appear, which must be received on or before the Objection, Exclusion, and Claim Submission Deadline.
- (e) The Class Administrator shall send a copy of each objection it receives to Defendants' Counsel and Class Counsel by email promptly after the objection is received, and in no event later than two (2) days after the Objection, Exclusion, and Claim Submission Deadline.
- (f) Any Class Member who does not submit a valid and timely objection shall be deemed to have waived and forfeited any and all rights that he or she may have to object and shall be barred from making any objection to the proposed Settlement.

8. Requests for Exclusion: Any Class Member may seek to exclude himself or herself from the Settlement Agreements. Any Class Member so excluded shall no longer be a member of the Class, shall not be bound by the Settlement Agreements, and shall not be entitled to any of its benefits.

- (a) A Class Member who wishes to be excluded from the Class must send to the Class Administrator a request for exclusion postmarked or electronically submitted no later than the Objection, Exclusion, and Claim Submission Deadline.
- (b) A valid request for exclusion must be in writing, and must contain the full name, address, telephone number, email address if available, and signature (including electronic signature) of the Class Member.
- (c) The Class Administrator shall send a copy of each request for exclusion it receives to Defendants' Counsel and Class Counsel by email promptly after the request is received, and in no event later than two (2) days after the Objection, Exclusion, and Claim Submission Deadline.
- (d) Any Class Member who does not timely submit a valid request for exclusion shall be bound by the terms of the Settlement Agreements as well as the Final Approval Order.

9. Claim Submission: Any Class Member seeking a distribution from the Class Settlement Account must send or electronically submit a Claim Form to the Class Administrator postmarked or electronically submitted no later than the Objection, Exclusion, and Claim Submission Deadline. Class Counsel is expressly authorized, in their sole discretion, to allow any Class Member who submits a Claim Form after the Objection, Exclusion, and Claim

Submission Deadline to receive a distribution from the Class Settlement Account to the extent that allowing such a distribution will not delay the provision of distributions to any Class Member who timely filed a Claim Form.

10. Fairness Hearing: A Final Approval and Fairness Hearing will be held on November 16, 2023 at 10:30 AM, at which time the Court will determine whether to grant final approval of the Settlement Agreements, and whether to enter the Final Approval Order.

The Fairness Hearing will be held at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, Courtroom N6E. Class Members may also attend the Fairness Hearing virtually, via telephone conference, by calling (646) 828-7666 and using meeting ID 160 890 5477 and Passcode 534073.

- (a) Papers in support of a motion for entry of the Final Approval Order and the petition for attorneys' fees shall be filed with the Court on or before November 6, 2023. Any responses to objections to the proposed Settlement Agreements or the petition for Attorney's Fees, and any further papers in support of the motion for entry of the Final Approval Order or the petition for attorneys' fees, shall be filed with the Court on or before November 13, 2023.

11. Termination: This Order shall terminate in the event that the Court denies the motion to enter the Final Approval Order following the Fairness Hearing with respect to either Settlement Agreement or if either Settlement Agreement is rejected by the mandate of an appellate court. In such event, the Settlement Agreement rejected by the Court or with respect to which a Final Approval Order is not entered shall be null and void and shall have no force or effect, no Party shall be bound by any of its terms, all Parties and Class Members

shall be restored to their respective positions existing immediately before the Execution Date of that Settlement Agreement, and any order entered by the Court in accordance with that Settlement Agreement shall be treated as vacated.

SO ORDERED.

Dated: August 9, 2023
Brooklyn, New York

/s/ NINA R. MORRISON

NINA R. MORRISON
UNITED STATES DISTRICT JUDGE