

SPCV20-00767-MO

e-Filed in Office
Tammie Mosley
Clerk of Superior Court
Chatham County
Date: 12/29/2020 12:10 PM
Reviewer: AB

IN THE SUPERIOR COURT OF CHATHAM COUNTY STATE OF GEORGIA

OLD TOWN TROLLEY TOURS OF SAVANNAH, INC.)	
)	
)	
Plaintiff,)	CIVIL ACTION NO. SPCV20-00767-MO
)	
v.)	
)	
THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH)	
)	
)	
Defendants.)	

SECOND AMENDED PRELIMINARY APPROVAL ORDER

WHEREAS, Plaintiff Old Town Trolley Tours of Savannah, Inc. (“Named Plaintiff”), individually and on behalf of all persons similarly situated and Defendant the Mayor and Aldermen of the City of Savannah (the “City of Savannah”) have agreed to a settlement of the above referenced matter (the “Lawsuit”); and

WHEREAS, this matter is before the Court on the Joint Motion and Supporting Memorandum of Law for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, Approval of Notice Program and to Schedule of Final Approval Hearing (the “Joint Motion”) pursuant to O.C.G.A. § 9-11-23(e) in which the Court has been asked (1) to give preliminary approval to a [Proposed] Consent Judgment on Aggregate Refund and Order (the “[Proposed] Consent Judgment”) entered into by Named Plaintiff and Defendant, through counsel, which, together with the exhibits thereto, sets forth the terms and conditions of the proposed resolution of this Lawsuit, and to authorize certain activities pursuant to the [Proposed] Consent Judgment and O.C.G.A. § 9-11-23; (2) to provisionally certify the Settlement Class; (3) designate Named Plaintiff as Class Representatives; (4) designate Roberts Tate, LLC

and Manly Shipley, LLP as Class Counsel; (5) approve the notice program; (6) approve certain forms to be used in the administration of the settlement; and (7) schedule the final approval hearing;

WHEREAS, the Court having considered the entire record of this Lawsuit, including the filing in support of preliminary approval, the [Proposed] Consent Judgment and the exhibits thereto, and the arguments and representations of counsel, and good cause appearing in the record,

IT IS ORDERED AND ADJUDGED as follows:

1. The Court has jurisdiction over the subject matter and parties.
2. Venue is proper.

**Provisional Class Certification
And
Appointment of Class Representative and Class Counsel**

3. In deciding whether to provisionally certify a settlement, a court must consider the same factors that it would consider in connection with a proposed litigation class – i.e. all O.C.G.A. §9-11-23(a) factors and at least one of the requirements under O.C.G.A. §9-11-23(b) must be satisfied – except that the court need not consider the manageability of a potential trial, since the settlement if approved, would obviate the need for a trial. See Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997)

4. The Court finds, for settlement purposes, that the O.C.G.A. §9-11-23 factors are present and thus certification of the proposed Settlement Class is appropriate. The Court, therefore, provisionally certifies the following Settlement Class:

- (1) Taxpayers similarly situated who, like Named Plaintiff, paid the Preservation Fee under Revenue Ordinance Article T, §3 from August 28, 2015 through 2020 (hereinafter the “Class”).

The Class is comprised of two (2) subclasses defined as follows:

(1) Taxpayers who operated sightseeing tours within the Historic District of Savannah and paid the Preservation Fee under Revenue Ordinance Article T, §3 (the “Tour Operator Subclass”) from August 28, 2015 through 2020; and

(2) Participants in sightseeing tours within the Historic District of Savannah who were charged for the Preservation Fee under Revenue Ordinance Article T, §3 by tour operators and paid the Preservation Fee (the “Tour Participants Subclass”) from August 28, 2015 through 2020.

5. The Court specifically determines that, for settlement purposes, the proposed Settlement Class met all the requirements of O.C.G.A. §9-11-23(a) and O.C.G.A. §9-11-23(b)(1), namely that the Settlement Class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representative are typical of absent class members; that the class representative will fairly and adequately protect the interests of the Settlement Class, as they have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this Lawsuit; and that the prosecution of separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for the party opposing the class or adjudications with respect to individual class members which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.¹

¹ Additionally, while the Court has elected to only certify the Class under 9-11-23(b)(1), the Court also finds that certification under 9-11-23(b)(3) would be appropriate as questions of law or fact common to the members of the class predominate over questions affecting only individual

6. The Court appoints Named Plaintiff Old Town Trolley Tours of Savannah, Inc. as class representative.

7. The Court appoints James L. Roberts, IV, Esquire of Roberts Tate, LLC and John Manly, Esquire and James E. Shipley, Jr., Esquire of Manly Shipley, LLP as Class Counsel. The Court finds that these lawyers are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Settlement

8. The Court does hereby preliminarily approve the [Proposed] Consent Judgment finding it to be fair, reasonable and adequate, subject to further consideration at the Final Approval Hearing described below.

9. The [Proposed] Consent Judgment establishes a process for the identification of Class Members and the calculation of individual refunds and a methodology for the refund payment process. The Court preliminarily approves the process for the identification of Class Members and the calculation of individual refunds set forth in the [Proposed] Consent Judgment. The Court also preliminarily approves the methodology for the refund payment process set forth in the [Proposed] Consent Judgment.

Final Approval Hearing

10. The Court directs that a final approval hearing (the “Final Approval Hearing”) be held in the Chatham County Courthouse at **9:30 a.m.** on **February 23, 2021** to rule:

(i) whether the proposed Settlement Class should be finally certified for settlement purposes pursuant to O.C.G.A. §9-11-23(e); (ii) whether the Settlement set forth in the [Proposed] Consent

members, satisfying the requirements of O.C.G.A. § 9-11-23(b)(3) and a class action is superior to other methods available for the fair and efficient adjudication of this controversy satisfying the requirements of O.C.G.A. § 9-11-23(b)(3).

Judgment should be finally approved as fair, reasonable, adequate and in the best interest of the Settlement Class; (iii) whether the [Proposed] Consent Judgment should be entered dismissing the Lawsuit against the City of Savannah; (iv) whether Class Counsel's application for attorney's fees and expenses (the "Fee Petition") should be approved; and (v) on such other matters as may be appropriate in the implementation of this Settlement. The Court may adjourn the Final Approval Hearing or modify any of the dates set forth herein without further notice to the Class. Additionally, in the event that no objections are filed, the Court may elect to conduct the hearing telephonically or virtually.

11. All papers of the Parties in support or opposition of the final approval of the [Proposed] Consent Judgment shall be filed with the Court and served by overnight mail or hand delivery on or before seven (7) days before the Final Approval Hearing.

Approval of Notice and Notice Program

12. The Court orders that the notice of the [Proposed] Consent Judgment and notice of the Final Approval Hearing be given, in the name of the Clerk of the Court, to the Class Members as follows (collectively referred to as the "Notice Program"):

- a. The Parties shall cause to be mailed, by first class mail as soon as practicable after entry of this Order, to all Tour Operator Subclass Members identified in Exhibit A attached to the [Proposed] Consent Judgment to their last known addresses as appearing on the records maintained by the City of Savannah, a copy of the notice (the "Full Notice") substantially in the form attached hereto as Exhibit "A";
- b. The City of Savannah shall cause, as soon as practicable after entry of this Order, a webpage be added to its website (the "Settlement Webpage") where Class Members may access this Order, the [Proposed] Consent Judgment, the Full Notice, other

related documents and information concerning this Lawsuit and the date that the Final Approval Hearing will occur;

- c. The City of Savannah shall cause, as soon as practicable after entry of this Order, a webpage be added to VisitSavannah.com where notices and other information concerning this Lawsuit can be posted;
- d. The Parties shall cause, as soon as practicable after entry of this Order, a notice to be placed in The Savannah Morning News (the “Publication Notice”) substantially in the form attached hereto as Exhibit “B”; and
- e. The Parties shall cause, as soon as practicable after entry of this Order, the Publication Notice to be posted on the webpage on VisitSavannah.com.

13. The Court approves the form and content of the Full Notice and the Publication Notice and the Notice Program, and finds:

- a. The mailing and website posting of the Full Notice and the publication of the Publication Notice in the manner set forth in the Notice Program set forth in Paragraph 12 above: (i) constitutes the best notice practicable under the circumstances; (ii) is reasonably calculated, under the circumstances, to apprise the Class Members of the [Proposed] Consent Judgment resolving this Lawsuit, the effect of the [Proposed] Consent Judgment (including the claims released), the right to object to any aspect of the [Proposed] Consent Judgment or the Fee Petition and the right to appear at the Final Approval Hearing;
- b. Constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the [Proposed] Consent Judgment; and

- c. Satisfies the requirements of O.C.G.A. § 9-11-23, including due process and all other applicable law and rules.

Claim Forms and Forms to be Used in the Administration of the Settlement

14. The Court approves the form, content and use of the Claim Form for Missing Tour Operators attached hereto as Exhibit “C” for use in the administration of the Settlement.

15. The Court approves the form, content and use of the Claim Form for Tour Participant attached hereto as Exhibit “D” for use in the administration of the Settlement.

16. The Court approves the form, content and use of the Objection Form attached hereto as Exhibit “E” for use in the administration of the Settlement.

17. The Court approves the form, content and use of the Notice of Presumption Refund List attached hereto as Exhibit “F” for use in the administration of the Settlement.

18. The Court approves the form, content and use of the Notice of Final Refund List attached hereto as Exhibit “G” for use in the administration of the Settlement.

19. The Court approves the form, content and use of the Notice of Completion attached hereto as Exhibit “H” for use in the administration of the Settlement.

20. The Court approves the form, content and use of the Tour Operator Address Update Form attached hereto as Exhibit “I” for use in the administration of the Settlement.

Objections by Class Members

21. The Court orders that Class Members may serve written objections to the [Proposed] Consent Judgment or the Fee Petition. Class Members may also appear and request to be heard at the Final Approval Hearing and show cause, if they have any reason why the [Proposed] Consent Judgment should not be approved as fair, reasonable and adequate, or why a Final Order and Consent Judgment should not be entered thereon or why attorneys’ fees, expenses should not

be awarded as requested; **provided however**, no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the [Proposed] Consent Judgment, or if approved, the Final Order and Consent Judgment to be entered thereon approving same, or the attorneys' fees, expenses, unless the person or entity has hand delivered or mailed a written objection postmarked on or before **February 8, 2021** to the following three (3) addresses:

<p>Court</p>	<p>Clerk of the Superior Court of Chatham County P.O. Box 10227 Savannah, GA 31412</p>
<p>Class Counsel</p>	<p>James L. Roberts, IV, Esquire ROBERTS TATE, LLC Post Office Box 21828 St. Simons Island, Georgia 31522</p>
<p>Counsel for Defendants</p>	<p>R. Bates Lovett, Esq. City Attorney Jennifer N. Herman,, Esq. Deputy City Attorney</p> <p>P. O. Box 1027 Savannah, GA 31402</p> <p>Patrick T. O'Connor, Esq. Patricia T. Paul OLIVER MANER LLP P. O. Box 10186 Savannah, GA 31412</p>

Additionally, no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the [Proposed] Consent Judgment, or if approved, the Final Order and Consent Judgment to be entered thereon approving same, or the attorneys' fees, expenses, unless the person or entity complies with the following requirements:

The objection must also set forth:

- a. The name of the Lawsuit;
- b. The objector's full name, address and telephone number;
- c. An explanation of the basis upon which the objector claims to be a Class Member;
- d. All grounds for the objection, accompanied by any legal support for the objection known to the objector or the objector's counsel;
- e. The number of times the objector has objected to a class action settlement within the five (5) years preceding the date on which the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders or opinions to or ruling upon the objector's prior such objections that were issued by any court in each listed case;
- f. The identity of all counsel who represented the objector, including any former or current counsel who may be entitled to any compensation for any reason related to the objection to the Consent Judgment or to Fee Petition;
- g. The number of times the objector counsel and/or counsel's law firm have objected to a class action settlement within the last five (5) years preceding the date the objector files the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any order or opinions related to or ruling upon counsel or the firm's prior such objections that were issued by any court in each listed case;
- h. Any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between the objector or objector's counsel and any other person or entity;

- i. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
 - j. A list of all persons which will be called to testify at the Final Approval Hearing in support of the objection;
 - k. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
 - l. The objector's signature (an attorney's signature is not sufficient).
22. Any Class Member who does object to the [Proposed] Consent Judgment, or to the award of attorneys' fees, expenses must make themselves available to be deposed regarding the grounds for their objection.
23. Any Class Member who does not make their objection in the manner provided in the Full Notice and as set forth in Paragraph 21 above or does not make themselves available to be deposed as set forth in Paragraph 22 above, shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the [Proposed] Consent Judgment, or to the award of attorneys' fees and expenses, unless otherwise ordered by this Court, but shall otherwise be bound by the Judgment to be entered and the release to be given.
24. All Class Members shall be bound by all orders, determinations and judgments in this Lawsuit concerning the [Proposed] Consent Judgment, whether favorable or unfavorable to the Class Members or any of them.

Filing of the Fee Petition

25. The Court directs the Fee Petition be filed with the Court no later than **February 3, 2021**. The Court shall make the final determination on the award of attorneys' fees and reimbursement of expenses in the Final Order and Consent Judgment.

Retention of Jurisdiction

26. The Court retains jurisdiction to consider all further applications arising out of or connected with the [Proposed] Consent Judgment or the enforcement thereof. The Court may approve the [Proposed] Consent Judgment with such modifications as may be agreed to by the settling Parties, if appropriate, without further notice to the Class.

Failure to Grant Final Approval

27. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the [Proposed] Consent Judgment is not finally approved by the Court. In such event, the [Proposed] Consent Judgment shall become null and void and be of no further force and effect, and neither the [Proposed] Consent Judgment nor the Court's Order, including this Order, relating to the [Proposed] Consent Judgment shall be used or referred to for any purpose whatsoever.

SO ORDERED. This 28th day of December, 2020.



Judge John E. Morse, Jr.