

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

JOHN FINN and SALVATORE J.
CONTRISTANO, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

EMPRESS AMBULANCE SERVICE, LLC,

Defendant.

Index No. 61058/2023

CLASS ACTION

**SUPPLEMENTAL MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs John Finn and Salvatore J. Contristano (“Plaintiffs”) submit this supplemental memorandum (“Supplemental Memorandum”) in support of their Unopposed Motion for Preliminary Approval of Class Action Settlement (the “Motion” or “Mot.”).

During the September 27, 2023 status conference, the Court requested that the parties provide additional information on four separate topics: 1) the estimated cost of settlement administration and confirmation that the amount is capped; 2) confirmation that the attorneys and plaintiffs in the stayed federal actions before Judge Karas in the Southern District of New York will be provided notice of the Settlement; 3) an estimate of the payments for claimants who submit valid claims for pro rata cash fund payments; and 4) the amount of attorneys’ fees to be sought by Plaintiffs’ counsel and the division of those fees as between proposed class counsel. Each of these topics is addressed below.

I. Estimated Cost of Settlement Administration

As discussed in the Motion, the parties have selected and seek appointment of Epiq Class

Action & Claims Solutions, Inc. (“Epiq”) as the Settlement Administrator. Subject to Court approval, the Settlement Administrator will provide Notice to the class consistent with the terms of the Settlement Agreement. The costs of settlement administration and class Notice will be paid from the Settlement Fund.

The parties selected Epiq following a competitive bidding process where they received and evaluated estimates from three nationally recognized class action settlement administration companies. As a result of this process, counsel for the parties agreed that Epiq is the best and most cost-effective choice for settlement administration. Epiq’s estimate for settlement administration is \$274,696. Of the \$274,696 administration estimate, \$136,249 is attributable to postage and related costs. This estimate is capped, with the condition that the capped amount is contingent on actual administration costs being at or below the costs anticipated in the estimate and an estimated claims rate of not more than 2.4%. This estimated settlement administration cost is reasonable and typical in view of the class size, which is 307,687 class members.

II. Notice to Attorneys and Plaintiffs in the Stayed Federal Actions

During the September 27th status conference, the Court ordered that the parties provide separate Notice to the attorneys and plaintiffs in the stayed federal actions before Judge Karas in the Southern District of New York. The parties will do so by sending all attorneys who filed actions in federal court which are currently stayed notice of the settlement via email and FedEx.

III. Estimate of Pro Rata Cash Fund Claims Payments

The parties provide the following estimates for valid pro rata cash fund claims payments at 1%, 2%, and 4% claims rates:

- 1% -- \$114 payments
- 2% -- \$53 payments
- 4% -- \$21 payments

A table demonstrating how these amounts were reached is attached as Exhibit 1.

IV. Attorneys' Fees and Division of Fees Between Proposed Class Counsel


Plaintiffs intend to request attorneys' fees in the amount of 1/3 of the Settlement Fund, or \$350,000.00. Reimbursement of litigation costs and expenses also will be requested.

The percentage of the fund method is acceptable in class action attorney fee requests where a common fund is created. *Ousmane v. City of New York*, 22 Misc. 3d 1136(A), 880 N.Y.S.2d 874 (Sup. Ct. 2009). Fee requests for 1/3 of a common fund fall within the range of fee awards granted in New York state court. *See M.F. v. Amida Care, Inc.*, 75 Misc. 3d 1209(A), 167 N.Y.S.3d 771 (N.Y. Sup. Ct. 2022) (citation omitted) (noting that New York trial courts have awarded a class action contingency fee ranging from 15% to 50%). As between the proposed Class Counsel firms, any awarded fees will be allocated between Class Counsel based on each firm's relative contributions toward the benefits to the class.

As indicated in the Motion, proposed Class Counsel will be filing a separate motion ("Fee Motion") requesting an award of attorneys' fees, costs, and expenses, as well as a Service Award of \$1,500 to each of the two named Class Representatives, which, if approved by the Court, will be paid from the Settlement Fund. The Fee Motion will be filed in accordance with deadline imposed by the preliminary approval order and Settlement Agreement.

Dated October 17, 2023

Respectfully submitted,


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Proposed Class Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2023, I electronically filed the foregoing using the Court's CM/ECF/electronic filing system, which will send notifications of such filing to all counsel of record.