

Return Date: No return date scheduled
Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 14

FILED
12/6/2021 8:58 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2020CH06208
Calendar, 14
15824685

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

RYAN STRASSBURGER, individually,
and on behalf of all others similarly
situated,

Plaintiff,

v.

SIX FLAGS THEME PARKS INC., a
Texas corporation, SIX FLAGS
ENTERTAINMENT CORPORATION, a
Delaware corporation, and GREAT
AMERICA LLC, d/b/a SIX FLAGS
GREAT AMERICA, an Illinois limited
liability company,

Defendants.

No. 2020CH06208

CLASS ACTION

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS'
FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

FILED DATE: 12/6/2021 8:58 AM 2020CH06208

TABLE OF CONTENTS

PAGE(S)

INTRODUCTION 1

I. THE OVERWHELMINGLY POSITIVE RESPONSE OF CLASS MEMBERS
WARRANTS FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT 2

II. THE UNOPPOSED FEE REQUEST SHOULD BE APPROVED IN FULL 4

CONCLUSION..... 4

INTRODUCTION

Plaintiff Ryan Strassburger, individually and as Class Representative on Behalf of All Similarly Situated Persons and a proposed Settlement Class (“Plaintiff”), hereby submits this supplemental brief and the Declaration of Yeremey Krivoshey (the “12/3 Krivoshey Decl.”) in further support of his previously filed motions for final approval of the class action settlement and an award of attorneys’ fees, costs, and expenses.

As Plaintiff previously explained, the Settlement in this case provides substantial material benefits to the Settlement Class in that it makes Class Members whole. The Settlement provides each

Class Member that had an active membership during the Class Period will automatically receive a free month of membership for each month their park was closed, as well as an upgrade to the next tier of membership through the end of 2022. 12/3 Krivoshey Decl. Ex. 1, Settlement Agreement ¶ 42(i).¹ Importantly, these free months will be applied as credits without Class Members having to file a claim. *Id.* As an alternative to receiving free months, a Class Member with an active membership can request and receive a gift card for the monthly membership charges (including taxes, but excluding miscellaneous fees) to the Class Member while his or her Home Park was closed due to the pandemic but was otherwise scheduled to be open. *Id.* Similarly, for those Class Members who paused their membership, but were charged prior to doing so, will automatically receive for each such membership 1 month of free membership for each 30 days between the closure of the Class Member’s Home Park due to the pandemic and the date that Class Member paused that membership. *Id.* ¶ 42(iii). All membership add-ons (such as parking or dining benefits) paid for by Class Members during the Class Period will also be automatically extended for the same duration and available during the free months. *Id.* ¶ 42. Further, Class Members may also submit a valid Claim Form to receive either 1 Golden Ticket or 5,000 Membership Rewards points. *Id.* ¶ 43.

The Parties estimate that the amount available simply from the credits to Class Members is equivalent to \$83,635,365.92 in value to Class Members. Given the excellent relief provided

¹ Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Paragraph 1 (“Definitions”) of the Settlement Agreement.

by the Settlement and the positive reaction of the Settlement Class, the Court should finally approve the Settlement.

I. THE OVERWHELMINGLY POSITIVE RESPONSE OF CLASS MEMBERS WARRANTS FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

As explained in Plaintiff's November 10, 2021 Motion for Final Approval, the Settlement Administrator successfully implemented the Notice plan and the total combined success rate of the email campaigns and mail notices was over 97%. Now that the November 24, 2021 Claims Deadline has passed, the Settlement Administrator has confirmed that a total of 101 claim forms were received through the mail and 6,804 claims were filed electronically through the Settlement Website. 12/3 Krivoshey Decl. Ex. 3, 12/3 Rappazini Declaration ¶ 8.

Additionally, as of November 30, 2021, the Settlement Administrator has received four requests for exclusions and four objections. *Id.* ¶¶ 6-7. This represents less than .001 % of the 982,630 individuals in the settlement class, an infinitesimal figure that is indicative of the reasonableness of the Settlement and weighs heavily in favor of final approval and further supports the "presumption of fairness." *See, e.g., Shaun Foley*, 2016 IL App (2d) 150236, ¶ 20 (affirming trial court's finding that opposition to class settlement was "de minimus" – and thus weighed in favor of settlement approval – where two objections were filed out of a class of over 1.8 million members).

Regardless, each of the four objections is meritless and should be overruled as they set forth general grievances with Six Flags' cancellation process during the pandemic and seek cash refunds. For instance, Objector Heneffent objects because he "requested a refund of the \$39.90 charged 3/4/20, \$39.90 charged 4/4/20, and the \$40 refundable membership deposit" but was denied. *See* 12/3 Krivoshey Decl. Ex. 4, 9/24/21 Heneffent Objection. He now seeks a refund of "\$119.80 and 2 complementary annual Diamond Elite Passes or \$600.00 equivalent value gift

card.” *See id.*² Objector Aragon objects to the Settlement because Six Flags “made it difficult for customers to cancel memberships by directing customers to their online portal.” 12/3 Krivoshey Decl. Ex. 5, 10/29/21 Aragon Objection. Objector Aragon “refuse[s] to patronize Six Flags further and insist[s] on monetary compensation for the trouble they have put me through.” *Id.* Objector Eigelberg objects to the Settlement for similar reasons. 12/3 Krivoshey Decl. Ex. 6, 11/18/21 Eigelberg Objection (“I had to cancel my account to get them to quit charging my account but then after months of not responding to me about canceling my account, then they started contacting me all of the time that I was still being chard [sic] because I never cancelled. Heck, as of today, they might still be charging me. That’s why I don’t like the settlement.”). Finally, Objector Sylvain complains that he was “mislead by one of the representative that force me to canceled my account either to receive a full refund” and objects to the Settlement because he believes Six Flags is required “to conduct a public refund to the entire member that’s in title to [sic]. I’ll appreciate it if I can receive mine.” 12/3 Krivoshey Decl. Ex. 7, 11/24/21 Sylvain Objection.

These objections should be overruled because the Settlement provides each of these objectors with more than they originally bargained for – a free month of membership for each month their park was closed, as well as an upgrade to the next tier of membership through the end of 2022. Settlement Agreement ¶ 42(i). And, for those objectors that cancelled their memberships, they received free tickets to compensate them for any money paid prior to cancellation. Settlement Agreement ¶ 42(iv). “The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.” *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *4 (E.D.N.Y. 2012). Indeed, Courts routinely find settlements

² Because Henenfert “still wish[es] to pursue action against Six Flags,” his objection might be better construed as an opt out. *See* 12/3 Krivoshey Decl. Ex. 4, 9/24 Henenfert Objection.

fair and reasonable where only a small percentage of class members object to or opt out of the settlement. *See, e.g., Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) (“[A] low percentage of objections points to the reasonableness of a proposed settlement and supports its approval.”); *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118–19 (3d Cir. 1990) (concluding that where 29 out of 281 class members objected, this fact “strongly favor[ed] settlement”); *Taifa v. Bayh*, 846 F. Supp. 723, 728 (N.D. Ind. 1994) (approving settlement and noting that objectors represent “little more than 10 percent” of the class); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D. Cal. 1979) (approving settlement where 16 percent of class objected, including certain named plaintiffs, and “find[ing] persuasive that eighty-four percent of the class has filed no opposition”).

II. THE UNOPPOSED FEE REQUEST SHOULD BE APPROVED IN FULL

As Plaintiff previously explained in his unopposed November 10, 2021 request for attorney’s fees, Class Counsel seeks an award to Class Counsel of \$1,200,000.00 in attorneys’ fees, costs, and expenses. The requested award represents just 1.2% of the \$83,635,365.92 in benefits being made available to Class Members, and a 2.4 multiplier on Class Counsel’s base lodestar. This requested award is unopposed and well within the range of fees typically awarded by Illinois courts in comparable class action settlements.

CONCLUSION

For the reasons stated above and in his previously filed final approval motion and unopposed request for attorney’s fees, Plaintiff respectfully requests that the Court overrule the objections and finally approve the settlement and award the requested attorneys’ fees. A proposed Final Order and a proposed Final Judgment are submitted herewith as Exhibit 8 and Exhibit 9 to the Krivoshey Declaration filed herewith.

RYAN STRASSBURGER, individually,
and on behalf of all others similarly situated,

Dated: December 3, 2021

By: Michael Aschebrener
One of Plaintiff's Attorneys

Michael Aschenbrener (masch@kamberlaw.com)
KamberLaw, LLC
220 N. Green Street
Chicago, Illinois 60607
Tel: 212-920-3072
Fax: 573-341-8548
Firm No. 62824

Scott Kamber (skamber@kamberlaw.com) (*pro hac vice* application forthcoming)
KamberLaw, LLC
201 Milwaukee Street, Suite 200
Denver, CO 80206
Tel: 212-920-3072
Fax: 573-341-8548

Yeremey Krivoshey (ykrivoshey@bursor.com) (*pro hac vice* application forthcoming)
Frederick J. Klorczyk III (fklorczyk@bursor.com) (*pro hac vice* application forthcoming)
Bursor & Fisher, P.A.
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Tel: 925-300-4455
Fax: 925-407-2700

Daryoosh Khashayar (daryoosh@mysdlawyers.com) (*pro hac vice* application forthcoming)
Khashayar Law Group
12636 High Bluff Dr., STE. 400
San Diego, CA 92130
Tel: 858-509-1550
Fax: 858-509-1551

Ronald A. Marron (ron@consumersadvocates.com) (*pro hac vice* application forthcoming)
Michael T. Houchin (mike@consumersadvocates.com) (*pro hac vice* application forthcoming)
Lilach Halperin (lilach@consumersadvocates.com) (*pro hac vice* application forthcoming)
Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103
Tel: 619-696-9006
Fax: 619-564-6665

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of this document
via email to the following:

Justin O. Kay
justin.kay@faegredrinker.com
Faegre Drinker Biddle & Reath LLP
191 North Wacker Drive, Suite 3700
Chicago, Illinois 60606

Dated: December 6, 2021

By: s/ Adam C. York