

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

\_\_\_\_\_ )  
 KEVIN VANDERMARK )  
 individually and on behalf of all others )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 MASON TENDERS DISTRICT COUNCIL )  
 WELFARE FUND; MASON TENDERS )  
 DISTRICT COUNCIL ANNUITY FUND; )  
 and MASON TENDERS DISTRICT )  
 COUNCIL OF GREATER NEW YORK )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**Index No. 153365/2023**

**PLAINTIFF’S NOTICE OF MOTION AND UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Kevin Vandermark (“Plaintiff” or “Class Representatives”), individually and on behalf of all others similarly situated, will moves this Court, in the Motion Submission Part at 60 Centre Street, Room 130, New York, New York, at 9:30 A.M. on the 1st day of June, 2023, for an order to:

1. Preliminarily approve the Settlement Agreement between Plaintiff and Defendants Mason Tenders’ District Council Welfare Fund, Mason Tenders’ District Council Pension Fund, and Mason Tenders’ District Council Annuity Fund (“MTDC” or “Defendants”), and the attachments thereto. A true and correct copy of the Settlement Agreement (“Settlement Agreement” or “S.A.”) is attached to the Declaration of David Lietz in Support of Plaintiff’s Memorandum in Support of Unopposed Motion for

Preliminary Approval of Class Action Settlement as **Exhibit 1**. Included with the Settlement Agreement are the following sub-exhibits:

- Sub-Exhibit A: Claim Form**
- Sub-Exhibit B: Long Notice**
- Sub-Exhibit C: Short Notice**
- Sub-Exhibit D: [Proposed] Preliminary Approval Order**
- Sub-Exhibit E: [Proposed] Final Approval Order and Judgment**

2. Conditionally certify the Settlement Class<sup>1</sup>;
3. Preliminarily approve the Settlement as sufficiently fair, reasonable, adequate, and in the best interest of the Settlement Class Members to warrant providing Notice to Settlement Class Members;
4. Appoint Postlethwaite & Netterville APC (“P&N”) as Settlement Administrator;
5. Approve the Notice Program set forth in the Settlement Agreement;
6. Direct the Settlement Administrator and Defendants to provide Notice to Settlement Class Members in accordance with the Notice Program;
7. Approve a customary form of short notice to be mailed to the Settlement Class (the “Short Form Notice for Settlement Class”) in form substantially similar to that attached to the Settlement Agreement as **Exhibit C** and a customary long form of notice (“Long Form Notice”) in a form substantially similar to that attached to the Settlement Agreement as **Exhibit B**, which together shall include a fair summary of the Parties’ respective litigation positions, the general terms of the Settlement set forth in this

---

<sup>1</sup> The capitalized terms in this Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement shall have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

- Settlement Agreement, instructions for how to object to or opt-out of the Settlement, the process and instructions for making claims to the extent contemplated in the Settlement Agreement, and the date, time, and place of the Final Approval Hearing;
8. Approve a Claim Form in a form substantially similar to that attached to the Settlement Agreement as **Exhibit A**;
  9. Direct the Settlement Administrator to conduct Settlement Administration in accordance with the provisions of this Settlement Agreement;
  10. Approve the Opt-Out and Objection procedures outlined in the Settlement Agreement;
  11. Provisionally appoint Plaintiff Kevin Vandermark as Class Representative;
  12. Provisionally appoint Milberg Coleman Bryson Phillips Grossman, PLLC as Settlement Class Counsel;
  13. Set a hearing date and schedule for the Final Approval Hearing for the Settlement and consideration of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards.

This Motion is made pursuant to N.Y. C.P.L.R. Ch. 8, Art. 9, §§ 901-904, and 908 and is based on: (1) this Motion; (2) Plaintiff's Memorandum in Support of Unopposed Motion for David K. Lietz, attached as **Exhibit A** to the Memorandum; (4) the Settlement Agreement; (5) the Notices of Class Action Settlement (including the Short Form Notice and Long Form Notice); (6) the Claim Form; (7) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (8) the [Proposed] Final Approval Order and Judgment Granting Final Approval of Class Action Settlement; (9) the records, pleadings, and papers filed in this action; and (10) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), you are hereby required to serve copies of your answering affidavits on the undersigned two days prior to the date set above for the submission of this motion.

Dated: May 24, 2023

Respectfully submitted,

/s/ Vicki J. Maniatis

Vicki J. Maniatis, Esq.

**MILBERG COLEMAN BRYSON**

**PHILLIPS GROSSMAN, PLLC**

100 Garden City Plaza, Suite 500

Garden City, NY 11530

Phone: (212) 594-5300

[vmaniatis@milberg.com](mailto:vmaniatis@milberg.com)

David. Lietz (*pro hac vice pending*)

**MILBERG COLEMAN BRYSON**

**PHILLIPS GROSSMAN, PLLC**

5335 Wisconsin Avenue, Suite 440

Washington, DC 20015

Phone: 866.252.0878

Email: [DLietz@milberg.com](mailto:DLietz@milberg.com)

*Counsel for Plaintiff and Proposed Class*

**CERTIFICATE OF SERVICE**

I, Vicki J. Maniatis, hereby certify that on this 24th day of May, 2023, I caused a true and correct copy of the foregoing Plaintiffs' Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement to be electronically filed using the Court's NYSCEF system, which will serve all counsel of record.

*/s/ Vicki J. Maniatis* \_\_\_\_\_

Vicki J. Maniatis