

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD LATIN PART 46M

Justice

-----X

KEVIN VANDERMARK,

Plaintiff,

- v -

MASON TENDERS DISTRICT COUNCIL WELFARE FUND,
MASON TENDERS DISTRICT COUNCIL PENSION FUND,
MASON TENDERS DISTRICT COUNCIL ANNUITY FUND,
MASON TENDERS DISTRICT COUNCIL OF GREATER
NEW YORK

Defendant.

-----X

INDEX NO. 153365/2023

MOTION DATE 09/27/2023, N/A

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 19, 20, 21
were read on this motion to/for ATTORNEY - FEES

The following e-filed documents, listed by NYSCEF document number (Motion 004) 22, 23, 24, 25
were read on this motion to/for MISCELLANEOUS

Upon the foregoing documents, it is ordered that the motions are granted pursuant to the
annexed Final Approval Order and Judgment.

10/11/2023
DATE

[Signature]
RICHARD LATIN, J.S.C.

CHECK ONE: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
[X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
APPLICATION: [] SETTLE ORDER [] SUBMIT ORDER
CHECK IF APPROPRIATE: [] INCLUDES TRANSFER/REASSIGN [] FIDUCIARY APPOINTMENT [] REFERENCE

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

KEVIN VANDERMARK, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MASON TENDERS’ DISTRICT COUNCIL WELFARE FUND, MASON TENDERS’ DISTRICT COUNCIL PENSION FUND, MASON TENDERS’ DISTRICT COUNCIL ANNUITY FUND, and MASON TENDERS’ DISTRICT COUNCIL OF GREATER NEW YORK,

Defendant.

Index No. 153365/2023

**FINAL APPROVAL
ORDER AND JUDGMENT**

WHEREAS, a putative class action is pending in this Court entitled *Kevin Vandermark, et al. v. Mason Tenders’ District Council Welfare Fund, et al.*, Index No. 153365/2023 (the “Action”);

WHEREAS, Plaintiff KEVIN VANDERMARK, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendants MASON TENDERS’ DISTRICT COUNCIL WELFARE FUND, MASON TENDERS’ DISTRICT COUNCIL PENSION FUND, and MASON TENDERS’ DISTRICT COUNCIL ANNUITY FUND (collectively “Defendants”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the Action and provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated June 5, 2023 (“Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, two Class Members submitted objections or Opt-Out Statements;

WHEREAS, the Court conducted a hearing on October 11, 2023 (the “Final Approval Hearing”) to consider, among other things, (a) the Objection(s) to the Settlement; (b) whether the terms and conditions of the Settlement were fair, reasonable and adequate to the Settlement Class, and should therefore be approved; (c) whether Class Counsel’s motion for Fee Award and Costs should be granted; (d) whether Settlement Class Representative’s motion for Service Award Payment should be granted; and (e) whether a judgment should be entered dismissing the Action with prejudice as against Defendants; and

WHEREFORE, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings had herein connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction**: This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on May 24, 2023; (b) the Notice documents filed with the Court on May 24, 2023; and (c) the Preliminary Approval Order, dated June 5, 2023.

3. **Class Certification for Settlement Purposes:** The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to CPLR §§ 901(a), 903, 905 and 907 on behalf of the Settlement Class consisting of all individuals who were sent notification by Defendants that their personal information was or may have been compromised in the Data Incident. Excluded from the Settlement Class are: (i) all Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

4. The requirements of CPLR § 901(a) have been met for settlement purposes, in that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual members; (c) the claims of the Settlement Class Representative are typical of the claims of the Settlement Class; (d) the Settlement Class Representative and Class Counsel will fairly and adequately protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Notice:** The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Class Counsel's motion for a Fee Award and Costs, (iv) Settlement Class Representative's motion for a Service Award Payment, (v) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Costs, and/or Settlement Class Representative's motion for a Service Award Payment, (vi) their right to exclude themselves from the Settlement Class, and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of CPLR §§ 904 and 908, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. No objections were filed by Settlement Class Members.

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Article 9 of the Civil Practice Law and Rules, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the amount of the Settlement Fund; the Releases provided for in the Settlement Agreement; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

8. Upon the Effective Date, the Action shall be, and hereby is dismissed with prejudice in its entirety as to the Defendants, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement, and all of the claims of the Settlement Class Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

9. **Binding Effect**: The terms of the Settlement Agreement and this Judgment shall be forever binding on Defendants, Plaintiffs and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submitted a Claim Form or seeks or obtains a distribution or benefits under the terms of the Settlement), as well as their respective successors and assigns.

10. **Releases**: The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims.

11. Notwithstanding Paragraph 10 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

12. **No Admissions**: This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by the Defendants of any liability, claim or wrongdoing in this Action or in any other proceeding.

13. Upon entry of this Order, Settlement Class members are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or indirectly, any action

or proceeding asserting any of the Released Claims against any of the Released Persons in this or any other forum.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court finds continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; and (b) the Settlement Class Members for all matters relating to the Action.

15. Class Counsel's motion for a Fee Award and Costs is hereby GRANTED and Class Counsel is hereby awarded a Fee Award and Cost in the amount of One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00) for their services in this action, which award the Court finds to be fair and reasonable pursuant to CPLR § 909, to be paid as set forth in the Settlement Agreement.

16. Settlement Class Representative's motion for a Service Award Payment is hereby GRANTED and Settlement Class Representative is awarded a Service Award Payment in the amount of One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00), to be paid as set forth in the Settlement Agreement.

17. **Modification of the Agreement of Settlement:** Without further approval from the Court, Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

18. **Termination of Settlement:** If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Judgment shall be without prejudice to the rights of Plaintiff, the other Settlement Class Members and Defendants, and the Parties shall revert to their respective positions in the Action as of _____ May 1, _____, 2023, as provided in the Settlement Agreement.

19. **Entry of Judgment:** There is no just reason for delay of entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final Judgment in the Action.

IT IS SO ORDERED this 11th day of October, 2023.



Hon. Richard G. Latin, J.S.C.