

**IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA**

DANA COHEN, JACK LEON, and JAMES MILLER, individually and on behalf of all others similarly situated;

Plaintiffs,

v.

UPMC PRESBYTERIAN SHADYSIDE;  
BOSTON MARKET CORPORATION;  
HOWARD'S TOWING AND RECOVERY, LLC; and HOWARD SZUMINSKY,

Defendants.

CIVIL DIVISION – CLASS ACTION

NO. GD-18-012332

**ORDER OF COURT GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

AND NOW, this 5th day of July, 2023, upon review of Plaintiffs'

Unopposed Motion for Preliminary Approval of Class Action Settlement and For Authorization of Class Notice as between Plaintiffs Dana Cohen, Jack Leon, and James Miller ("Class Representatives" or "Plaintiffs"), individually and on behalf of all others similarly situated, and Defendants Boston Market Corporation, ("Boston Market") and Howard's Towing and Recovery, LLC and Howard Szuminsky (collectively "Howard's Towing") (and together with Boston Market, "Defendants") it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Court has reviewed the Parties' Proposed Class Action Settlement Agreement and Release ("Settlement" or "Agreement") and Exhibits attached thereto, Plaintiffs' Unopposed Motion for Preliminary Approval, and Memorandum in Support.

2. To the extent not otherwise defined herein, all capitalized terms shall have the meanings attributed to them in the Agreement.

3. The Court has jurisdiction over the subject matter of this action, and personal jurisdiction over all parties to the litigation, including all Class Members.

#### **Reasonableness of the Proposed Settlement**

4. The Court finds that: (i) the proposed Settlement resulted from extensive and good-faith negotiations at arms' length; (ii) the proposed Settlement was concluded only after extensive discovery and litigation including contested class certification and conciliation facilitated by the Court; and (iii) the terms of the proposed Settlement as evidenced by the Agreement appears to be sufficiently fair, reasonable, and adequate in light of the risks, delays, and expenses of further litigation, warranting the sending and website publication of the Notices of Class Action Settlement in the forms attached to the Agreement as Exhibit 3 and 4, and the scheduling of a Final Fairness Hearing.

5. The Court finds that the Proposed Settlement includes sufficient monetary consideration to provide all Class Members with considerable financial recovery, which is within the range of reasonableness and an adequate exchange for the Class's release of claims as described in the Agreement.

6. Accordingly, the Court grants preliminary approval of the Settlement, subject to final approval, and authorizes the Parties to conduct their plan for Notice as described in the Agreement.

#### **Notice Plan and Form of Notice**

7. The Court finds that the form, content, and method of giving notice to the Class as described in the Settlement and exhibits: (a) constitute the best practicable notice to the Class;

(b) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Pa. R. Civ. P. 1712 and 1714, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notices are written in plain language, use simple terminology, and are designed to be readily understandable by Class Members.

8. The Parties and Settlement Administrator are authorized to make non-material modifications to the notices, such as proofing and formatting alterations and filling in dates, without further Order from this Court.

9. Analytics Consulting LLC is approved as the Settlement Administrator. The Settlement Administrator is directed to carry out the notice plan in conformance with the Settlement and to perform all other tasks that the Agreement requires, including the creation of a Qualified Settlement Fund.

10. Within 10 days from the entry of this Order, Class Counsel will provide the Settlement Administrator with the Class List. The Settlement Administrator shall cause notice to be disseminated to Class Members within 30 days of its receipt of the Class List. Notice shall be sent to all Class Members identified by the Settlement Administrator based on the information provided by Howard's Towbook Systems, and upon reasonable investigation, as needed to identify Class Members. The Notice from Exhibit 3 shall also be posted on a Settlement Website.

#### **Opting Out from the Class**

11. Any Class Member who wishes to be excluded from the Class must mail a written notification of their intent to exclude himself or herself from the Settlement to the Settlement

Administrator, Class Counsel, and Defendants' Counsel at the addresses provided in the Notice, postmarked no later than the end of the Opt Out Period, which shall be 60 days from the date which the Settlement administrator first mails or emails Notice to the Class, as specified in the Notice, and sent via first class postage pre-paid United States mail. The written request for exclusion must include the name of this Litigation or a decipherable approximation (*Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similarly situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky*, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.)), the full name, address, and telephone number of the Class Member or the name, address, telephone number, relationship, and signature of any individual who is acting on behalf of a deceased or incapacitated Class Member; and the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement.

12. Any Class Member who submits a valid and timely notice of their intent to opt out of the Settlement shall not receive any benefits of or be bound by the terms of the Settlement. Any Class Member that does not timely and validly opt himself or herself out from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Class Member that has not submitted a timely, valid written Opt-Out Form (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement, and the Final Approval Order and Judgment.

### Objections to the Settlement

13. A Class Member who complies with the requirements of this Order may object to the Settlement, the request of Class Counsel for an award of attorneys' fees, costs, and expenses, and/or the request for Service Awards.

14. No Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Class Member shall be received and considered by the Court, unless the objection is (a) filed with the Court; and (b) be served on Class Counsel and Counsel for the Defendants at the addresses listed in the Notice, and postmarked by no later than the Objection Date, which shall be 60 days from the date which the Settlement administrator first mails or emails Notice to the Class, as specified in the Notice. For the objection to be considered by the Court, the objection shall set forth:

- a. The name of the Litigation: *Dana Cohen et. al. v. Boston Market Corporation et. al.*, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.), or a decipherable approximation;
- b. the objector's full name, address, telephone number, and email address;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- d. the identity of all counsel who represent the objector, if any; and
- e. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and such written statement must be filed with the Court and served on counsel for the parties no later than the Objection Date.

15. In addition, any Class Member who objects to the proposed Settlement must make himself or herself available to be deposed regarding the grounds for the objection and must provide along with the objection the dates when the objector will be available to be deposed

during the period from when the objection is filed through the date seven days before the Final Approval Hearing.

16. Any Class Member who fails to comply with the provisions in this Order will waive and forfeit any and all rights they may have to object, and shall be bound by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement, if finally approved. Any Class Member who both objects to the Settlement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

#### **Distribution Plan**

17. The Settlement establishes a process and methodology for paying Class Members their share of the Settlement Fund. Specifically, the Settlement Administrator will employ the following procedure to distribute the Settlement Fund. The Settlement Administrator will divide the Settlement Fund by the total number of Class Members to determine each Class Member's *pro rata* share of the Settlement Fund ("Portion of the Settlement Fund"). The Settlement Administrator will then increase each Class Member's Portion of the Settlement Fund *pro rata* for each Class Member who has opted out of the Settlement to determine each Participating Class Member's Individual Settlement Amount. The Settlement Administrator will then distribute to each Participating Class Member their Participating Class Member's Individual Settlement Amount. The Court preliminarily approves this process.

#### **Termination of the Settlement and Use of this Order**

18. 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 Settlement is not finally approved by the Court or is

terminated in accordance with the terms of the Settlement. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

19. If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Class Representative or any other Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense or claims it may have in this Litigation or in any other lawsuit.

#### **Stay of Proceedings**

20. Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

#### **Continuance of Final Approval Hearing**

21. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website.

#### **Actions by Class Members**

22. The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Class Members against Defendants related to

their nonconsensual tow from the Parking Lot by Howard's Towing during the applicable statute of limitations.

### **Final Approval Hearing**

23. A Final Approval Hearing shall take place before the Court on December 7, 2023 at 9:00 a.m./~~p.m.~~ in Courtroom 820 before Judge Philip A. Ignelzi of the Court of Common Pleas of Allegheny County, Pennsylvania, City-County Building, 414 Grant Street, Pittsburgh, PA 15219, to determine, among other things, whether: (a) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Second Amended Complaint and Litigation should be dismissed with prejudice; (b) Class Members should be bound by the releases set forth in the Settlement; (c) the proposed Final Approval Order and Judgment should be entered; (d) the application of Class Counsel for an award of attorneys' fees, costs, and expenses should be approved; and (e) the application for Service Awards to the Class Representatives should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing.

24. Class Counsel shall submit their application for fees, costs, and expenses and the application for Service Awards at least 14 days before the Objection Deadline. Objectors, if any, shall file any response to Class Counsel's motions no later than 14 days prior to the Final Approval Hearing. By no later than 7 days prior to the Final Approval Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed.

25. Any Class Member that has not timely and properly excluded himself or herself from the Class in the manner described below, may appear at the Final Approval Hearing in



person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Class Member that has elected to exclude himself or herself from the Class shall be entitled to object or otherwise appear, and, further provided, that no Class Member shall be heard in opposition to the Settlement unless the Class Member complies with the requirements of this Order pertaining to objections, which are described above and in the Notice.

**Summary of Deadlines**

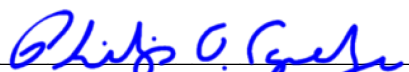
26. The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include but are not limited to the following:

<b><u>Event</u></b>	<b><u>Deadline</u></b>
Class Counsel to Provide Class List to Settlement Administrator	Within 10 days after the entry of the Preliminary Approval Order
Notice Date	No later than 30 days after receipt of the Class List from Class Counsel
Objection and Opt-Out Deadline	60 days from the date which the Settlement administrator first mails or emails Notice to the Class, which date will be included on the Notice and posted on the Settlement Website.
Final Approval Hearing:	A date to be set by the Court no earlier than 121 days after the entry of the Preliminary Approval Order
Application for Attorneys' Fees, Expenses, and Service Awards ("Fee Application")	No later than 14 days prior to the Objection and Opt-Out Deadline.
Motion for Final Approval of the Settlement ("Final Approval Motion")	21 days prior to Final Approval Hearing
Objectors', if any, Response to Final Approval Motion and Fee Application	14 days prior to Final Approval Hearing

Replies in Support of Final Approval and Fee Motions	7 days Prior to Final Approval Hearing
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It is so Ordered this 5th day of July, 2023.

BY THE COURT:

 J.  
The Honorable Philip A. Ignelzi