

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

JAMES NIETO, individually and on behalf )	)	
of all others similarly situated, )	)	
	)	
Plaintiff, )	)	
	)	No. 2021 CH 05747
v. )	)	
	)	
SHORELINE MARINE COMPANY, an )	)	Hon. Celia G. Gamrath
Illinois corporation d/b/a )	)	
SHORELINE CHARTERS and )	)	
SHORELINE SIGHTSEEING CRUISES, )	)	
	)	
Defendant. )	)	

**PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on Plaintiff’s Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the “Motion”), the Court having reviewed in detail and considered the Motion and Memorandum in support of the Motion, the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiff James Nieto (“Plaintiff”), and Defendant Shoreline Marine Company, and Illinois corporation d/b/a Shoreline Charters and Shoreline Sightseeing Cruises (“Defendant”) (collectively, the “Parties”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was

negotiated at arms-length between the Parties, who were represented by experienced counsel. Nevertheless, in light of the recent caselaw and all relevant factors the Court is called upon to consider to protect the interests of absent class members, the parties are on notice that at the final approval stage the Court may be reluctant to approve attorney's fees of a full one-third (33%) of the settlement fund and incentive awards totaling \$7,500. The Court will require class counsel to provide a strong legal and factual basis, including affidavits, before approving attorney's fees and incentive awards. For illustrative purposes, the Court has determined that after deducting administrative costs of \$8,800, costs of \$1,000, incentive awards totaling \$7,500 and attorney's fees of \$76,466 from the settlement fund of \$229,466 would result in a net fund available for distribution to class members of \$135,634; that's less than 60% of the fund. Assuming, all 248 putative class members file a claim the amount of each check would be \$551.35. It is incumbent on class counsel to support a showing that the proposed incentive awards totally \$7,500 and one-third percentage-of-fund attorney's fees are justified, and that any additional payment to a non-class representative (simply a class member) like James Suzka is allowable by law or warranted under the circumstances.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure – including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims – have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of:

All individuals, excluding any persons who were subject to or governed by the Jones Act and excluding any persons who signed releases pursuant to

Shoreline Sightseeing's Biometric Privacy Policy before using the electronic handpunch timekeeping device, whose biometrics were captured, collected, obtained, stored or used by Defendant within the state of Illinois at any time during the period of November 12, 2016 through the date of preliminary approval of the Settlement.

5. For settlement purposes only, Plaintiff James Nieto is hereby appointed as Class Representative.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

James X. Bormes  
Catherine P. Sons  
Law Office of James X. Bormes, P.C.  
8 S. Michigan Ave., Suite 2600  
Chicago, IL 60603  
(312) 201-0575  
Fax: (312) 332-0600  
jxbormes@bormeslaw.com  
cpsons@bormeslaw.com

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the Action in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Class Notice and Claim Form, attached to the Settlement Agreement as Exhibits 1 and 2, and finds that they meet the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfy due process.

9. The Court finds that the planned notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best

notice practicable under the circumstances, where Class Members are current or former employees of Defendant and may be readily ascertained by Defendant's records, and satisfies fully the requirements of due process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Analytics Consulting, LLC is hereby appointed Claims Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement. The total payment to the Claims Administrator for administering the Settlement shall not exceed \$8,800.

11. The Claims Administrator may proceed with the distribution of Class Notice and Claim Form as set forth in the Settlement Agreement.

12. Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions provided in the Class Notice and the Settlement Agreement.

13. All Claim Forms must be postmarked and mailed via U.S. Mail to the address specified in the Claim Form no later than 45 days after the date the Notice Packet is first mailed. Class Members who do not timely submit a Claim Form deemed to be valid in accordance with the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement checks that are not negotiated within one hundred twenty (120) days of the date on the check shall become null and void and the corresponding funds shall become cy

*pres* with the recipient being the Chicago Bar Foundation. The Claims Administrator shall be responsible for issuing a check to the Chicago Bar Foundation.

15. Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against the Defendant relating to the claims released under the terms of the Settlement Agreement.

16. Any Person within the Settlement Class may request exclusion from the Settlement Class by expressly stating his/her request in a written exclusion request. In order to exercise the right to be excluded, a person within the Settlement Class must timely submit a written request for exclusion to the Claims Administrator providing his/her name, address and telephone number, the name and number of the case, and a clear statement that he or she wishes to be excluded from the Settlement Class. Any request for exclusion must be personally signed by the Person requesting exclusion. Such written request for exclusion must be returned by mail to the Claims Administrator at a specified address, and must be postmarked no later than forty-five (45) days after the date the Notice Packet is first mailed.

17. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees not to

exceed Seventy-Six Thousand Four Hundred Sixty-Six Dollars (\$76,466.00), costs not to exceed One Thousand Dollars (\$1,000.00), as well as Incentive Awards not to exceed Four Thousand Dollars (\$4,000.00) for the Class Representative and not to exceed Three Thousand Five Hundred Dollars (\$3,500.00) to Class Member James Suzka by June 29, 2023.

19. Any Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys’ fees that Class Counsel intends to seek and the payment of the Incentive Awards to the Class Representative and Class Member Suzka, may do so, either personally or through an attorney, by mailing a written statement objecting to the Settlement to the Claims Administrator (“Objection”), together with the supporting documentation set forth below in Paragraph 19 of this Order, to the Claims Administrator no later than forty-five (45) days after the date the Notice Packet is first mailed. The Claims Administrator will file the Objection with the Clerk of the Court and provide copies to counsel for the Parties. Addresses for Class Counsel, Defendant’s Counsel, the Claims Administrator, and the Clerk of Court are as follows:

<p><b>Class Counsel</b></p> <p>James X. Bormes  Catherine P. Sons  Law Office of James X. Bormes, P.C.  8 South Michigan Avenue, Suite 2600  Chicago, IL 60603</p>	<p><b>Defendant’s Counsel</b></p> <p>William H. Jones  King &amp; Jones  Three First National Plaza  70 West Madison Street, Suite 3970  Chicago, IL 60602</p>
<p><b>Claims Administrator</b></p> <p>Analytics Consulting, LLC  18675 Lake Drive E  Chanhausen, MN  55317</p>	<p><b>Clerk of Court</b></p> <p>Clerk of the Circuit Court of Cook County  Chancery Division  50 W. Washington Street, #802  Chicago, IL 60602</p>

20. Any Class Member who has not requested exclusion and who intends to object

to the Settlement must (i) be signed personally by the Class Member submitting the objection (not just by an attorney submitting the objection on behalf of the Class Member); (ii) include the full name, current address, and current telephone number of the objecting Settlement Class Member; (iii) include a statement of the specific grounds for the objection; (iv) state whether the objecting Class Member intends to appear at the Final Approval Hearing and disclose the identity of all counsel who represent the objector and/or will appear at the Final Approval Hearing; (v) identify any witnesses he/she may seek to call to testify at the Final Approval Hearing; and (vi) enclose copies of any documents that the objector wishes to submit in support of his/her/their position. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees and costs, to the payment of the Incentive Awards, and to the Final Approval Order and the right to appeal same.

21. A Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's Fee and Costs Application and/or the request for the Incentive Awards to the Class Representative and Class Member Suzka are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Class Member who submits a timely written objection to

the Claims Administrator and who indicates his/her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Class Member must also include in his/her written objection the identity of any witnesses he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Class Member who does not make his or her objection to the Settlement in the manner provided herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the final approval of the proposed Settlement shall be filed by June 29, 2023.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Defendant Released Parties.

25. A hearing (the “Final Approval Hearing”) shall be held before the Court on July 13, 2023 at 9:30 a.m. in Courtroom 2508 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602 (or at such other time or location as the Court may without further notice direct) or via Zoom (Meeting ID: 928 4730 2982; Password: 411367) for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;



(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Class Members from further pursuing claims released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees and costs of Class Counsel;

(e) to consider the application for an Incentive Awards to the Class Representative and Class Member Suzka;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

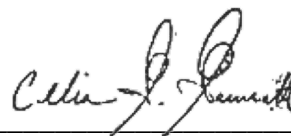
26. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Class Members.

27. Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

28. All discovery and other proceedings in the Action as between Plaintiff and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

**IT IS SO ORDERED.**

ENTERED:



Honorable Celia G. Gamrath #2031

Judge Celia G. Gamrath

APR 19 2023

Circuit Court-2031