

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

RICHARD MCCALL and ABRAHAM
LIBMAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

HERCULES CORP.,

Defendant.

Index No. 66810/2021

**[PROPOSED] ORDER GRANTING FINAL CERTIFICATION OF THE SETTLEMENT
CLASS, FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT,
ENHANCEMENT AWARDS, ATTORNEYS' FEES AND EXPENSES, AND ENTERING
FINAL JUDGMENT**

THIS CAUSE is before the Court on Plaintiffs' Unopposed Motion For Attorneys' Fees, Costs, Expenses, And Named Plaintiffs' Enhancement Awards and Plaintiffs' Unopposed Motion For Final Certification Of The Settlement Class, And Final Approval Of The Class Action Settlement. Having considered the motions, the Settlement Agreement and all exhibits attached thereto, the complete record in this case, and oral argument presented at the Final Approval Hearing, and for good cause shown:

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

Certification of the Settlement Class

1. For purposes of effectuating the Settlement described in the Class Action Settlement Agreement ("Settlement Agreement"), the Court reaffirms its prior findings, pursuant to New York Civil Practice Law and Rules ("CPLR") § 901, certifying the following settlement class (the "Settlement Class"):

All persons who possessed and used a Hercules Laundry Card after January 1, 2017 and stopped using their Hercules Laundry Card prior to July 13, 2021 and no longer possess their Hercules Laundry Card.

The Settlement Class will be divided into two groups: (A) Group A, which consists of all class members who (i) were charged processing and handling fees in connection with recovering unused funds on a Hercules Laundry Card; or (ii) sent in their Hercules Laundry Card for a recovery of unused funds, but had those cards returned by Hercules because the cards had less than a \$5 balance; and (B) Group B, which consists of all other persons who possessed and used a Hercules Laundry Card after January 1, 2017 and stopped using their Hercules Laundry Card prior to July 13, 2021 and no longer possess their Hercules Laundry Card.¹

Preliminary Approval Order, ¶ 9 (NYSCEF Doc. No. 11)

2. Pursuant to the Settlement Agreement, and for Settlement purposes only, the Court confirms its prior finding as to the Settlement Class that:
 - a. The Class is so numerous that joinder of all members is impracticable;
 - b. there are questions of law or fact common to the Settlement Class;
 - c. the claims of the named Plaintiffs are typical of the claims of the Settlement Class;
 - d. the named Plaintiffs will fairly and adequately protect the interests of the Settlement Class;
 - e. questions of law and fact common to Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and,

¹ Excluded from the Settlement Class are (1) any Judge presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded persons.

f. a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

3. The Court reaffirms its appointment of Plaintiffs Richard McCall and Abraham Libman as Representatives of the Settlement Class.

4. The Court reaffirms its appointment of Bursor & Fisher, P.A., to act as Class Counsel to the Settlement Class

Notice To Potential Settlement Class Members

5. The Court finds, based on the Affidavit of the Claims Administrator Jennifer M. Keough dated June 23, 2022, that the Court-approved Settlement Notice and Claim Form (“Notice”), attached as Exhibits A and B to the Keough Affidavit, has been provided to the members of the Settlement Class in accordance with the Settlement Agreement and the Court’s Preliminary Approval Order, and that Notice to the Settlement Class constituted the best notice practicable under the circumstances as well as valid, due, and sufficient notice to all those entitled thereto and complies fully with the requirements of due process and CPLR §§ 904 and 908.

Final Approval of the Settlement

6. The terms of the Settlement Agreement are incorporated by reference herein.

7. The Court grants final approval of the Settlement set forth in the Settlement Agreement (including all releases), finding it fair, reasonable and adequate, and in the best interests of the Settlement Class given, inter alia, the Settlement Fund as stated in the Settlement Agreement, the likelihood that Plaintiffs will succeed on the merits; the extent of support from the parties, including the lack of any objections by any Settlement Class Members to the Settlement; the judgment of counsel; the presence of good faith bargaining with the assistance of

an experienced mediator; and the complexity and nature of the issues of law and fact.

8. The Court further determines that the Settlement is binding on all Settlement Class Members. All Settlement Class Members are forever bound by this Order and Final Judgment, have fully and forever released and discharged all Released Claims against all Released Parties, and are permanently enjoined and barred from asserting, instituting, commencing, or prosecuting any Released Claims, in any action or proceeding, either directly, individually, representatively, derivatively, or in any other capacity.

9. The Court directs that payments be made pursuant to the Settlement Agreement to all Settlement Class Members who have submitted a timely and valid Claim form pursuant to the Settlement Agreement as soon as practicable.

Enhancement Awards, Attorneys' Fees and Expenses

10. Plaintiffs' request for Named Plaintiff Enhancement Awards is granted. Consistent with the terms of the Settlement Agreement, Defendant will pay \$5,000 each to Named Plaintiffs Richard McCall and Abraham Libman in addition to their respective allocated shares of the Settlement. These Named Plaintiff Enhancement Awards shall be paid separate and apart from the attorneys' fee and expense award.

11. The Court finds Plaintiffs' request for attorneys' fees and expenses reasonable for the reasons set forth in Plaintiffs' unopposed motion and it is therefore granted. Consistent with the terms of the Settlement Agreement, Defendant will pay \$787,500 to Class Counsel for their attorneys' fees and expenses.

Further Matters

12. The Court hereby dismisses this action with prejudice, with each party to bear their own costs, except as provided in this Order or in the Settlement Agreement.

13. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Released Parties may file the Settlement Agreement and/or the Judgment from this litigation in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. If for any reason the Effective Date does not occur, then (1) the certification of the Settlement Class shall be deemed vacated, (2) the certification of the Settlement Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification issues, and (3) the Parties and Releasing Parties shall return to the status quo ante in the litigation as it existed on November 16, 2021, without prejudice to the right of any of the Parties and Releasing Parties to assert any right or position that could have been asserted if the Settlement had never been reached or proposed to the Court..

15. Each and every Settlement Class Member, and any Person actually or purportedly acting on behalf of any Settlement Class Member, is hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial,

administrative, arbitral, or other forum, against the Released Parties. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Order and Final Judgment, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

Reservation of Jurisdiction

16. Without affecting the finality of this Order and Final Judgment, the Court hereby reserves exclusive jurisdiction to consider any matters that may arise concerning the administration, interpretation, consummation, and enforcement of the Settlement.

IT IS SO ORDERED, this _____ day of _____, 2022.

The Honorable _____, J.S.C.