

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

TIPSY NAIL CLUB LLC, SALON PHOENIX  
COSMETOLOGY, LLC, RAPHA MASSAGE,  
LLC, ENLIGHTEN MASSAGE THERAPY LLC,  
THE FACIAL BAR, LLC, SALON GOLDYN,  
INC, and SALON HAIRROIN, INC., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CLASSPASS INC., CLASSPASS, LLC, FRITZ  
LANMAN, and PAYAL KADAKIA,

Defendants.

No. 21 Civ. 8662 (JHR)

**~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF REVISED SETTLEMENT**

WHEREAS, an action is pending before this Court styled *Tipsy Nail Club LLC, et al. v. ClassPass Inc. et al.*, No. 21 Civ. 8662 (JHR) (the “Action”);

WHEREAS, Named Plaintiffs Tipsy Nail Club LLC, Salon Phoenix Cosmetology, LLC, Rapha Massage LLC, Enlighten Massage Therapy LLC, The Facial Bar, LLC, Salon Goldyn, Inc, and Salon Hairroin, Inc. (collectively, “Named Plaintiffs”) having moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of the Action, in accordance with a Settlement Agreement with ClassPass Inc., ClassPass, LLC, Fritz Lanman, and Payal Kadakia (collectively, “Defendants”), which Settlement Agreement sets forth the terms and conditions for a settlement of the Action and for dismissal of the Action against Defendants with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Settlement Agreement, and Plaintiffs’ Motion for Preliminary Settlement Approval and supporting papers thereto;

WHEREAS, on May 9, 2023, the Court held a conference on the motion, following which the parties made certain changes to the Original Settlement and the Notice of Class Action Settlement;

WHEREAS, on June 27, 2023, Plaintiffs filed a Motion for Preliminary Approval of Revised Settlement that included a Revised Settlement Agreement (the “Settlement” or “Settlement Agreement”).

WHEREAS, all terms in initial capitalization used in this Preliminary Approval Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby preliminarily approves the Settlement Agreement, subject to further consideration at the Fairness Hearing described below.

2. A hearing (the “Fairness Hearing”) shall be held before this Court <sup>by telephone</sup> on October 3, 2023, at 11: 30 a.m., ~~either virtually or in person at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007~~ to determine: (a) whether the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; (b) whether a Final Judgment and Order of Dismissal as provided for in the Settlement Agreement should be entered; (c) whether the Court should certify the Settlement Class pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure; (d) whether Plaintiffs’ Co-Lead Counsel (“Co-Lead Counsel”) are entitled to attorneys’ fees and reimbursement of costs and expenses and, if so, in what amount; (e) whether Named Plaintiffs are entitled to service awards and, if so, in what amount; and (f) such other matters as the Court may deem appropriate. <sup>For call-in information, see the last page of this Order (page 10).</sup>

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court provisionally certifies, solely for purposes of effectuating the Settlement Agreement, a Settlement Class defined as follows:

All persons or entities in the United States that ClassPass has listed on its website or mobile application (“app”) from August 1, 2020 through the Preliminary Approval Date as part of the ClassPass Concierge program that are not ClassPass Partners. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, and federal governmental entities and instrumentalities of the federal government and any judicial officer presiding over the Action, and any member of his or her immediate family and judicial staff.

4. Solely for purposes of the Settlement Agreement, the Court preliminarily finds that the requirements of Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) have been satisfied, as follows: (a) the members of the Settlement Class are so numerous that joinder of all Settlement

Class Members in the Action is impracticable; (b) there are questions of law or fact common to the Settlement Class that predominate over any individual questions; (c) the claims of Named Plaintiffs are typical of the claims of the Settlement Class; (d) Named Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the Settlement Class; (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and (f) final injunctive relief is appropriate.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement Agreement only, Named Plaintiffs are preliminarily certified as class representatives for the Settlement Class, and the law firms of Pollock Cohen LLP and Boni, Zack & Snyder LLC are appointed Co-Lead Counsel.

6. If, for any reason, Final Approval, as defined in paragraph 12 of the Settlement Agreement, does not occur, this conditional certification of the Settlement Class shall be deemed null and void without the need for further action by the Court or any of the Settling Parties. In such circumstances, each of the Settling Parties shall retain its rights to seek or object to certification of this litigation as a class action under Rule 23, or under any state or federal rule, statute, law, or provision thereof, and to contest and appeal any grant or denial of certification in this litigation.

7. Pursuant to the Settlement Agreement, within ten (10) days after Co-Lead Counsel filed with the Court the motion papers seeking preliminary approval of the Settlement Agreement, the Settlement Administrator, in conjunction with Defendants, provided notice of the Settlement Agreement to the appropriate state and federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

8. The Court approves, as to form and content, the Long Form Class Notice (“Notice”) and the Short Form Class Notice (“Short Form Notice”), attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Short Form Notice substantially in the manner and form set forth in ¶ 9 of this Order meet the requirements of Fed. R. Civ. P. 23 and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to notice.

9. The Court appoints RG/2 Claims Administration LLC Settlement Administrator to supervise and administer the dissemination of notice and to process the claims as more fully set forth below:

(a) Not later than ten (10) calendar days after receipt of the Class List, the Settlement Administrator shall cause the Short Form Notice to be sent to Class Members that can be identified with reasonable effort. The Short Form Notice shall advise Settlement Class Members, among other things, that they should monitor the settlement website to be established for this matter (the “Settlement Website”), for additional information relating to the Settlement Agreement where the Settlement Administrator shall post the Settlement Agreement, Long Form Class Notice, and Short Form Class Notice.

(b) Not later than fourteen (14) days prior to the Fairness Hearing, ~~Co-Lead Counsel shall serve on Defendants’ counsel and file with the Court proof, by declaration,~~ **the Settlement Administrator shall file (or provide to Co-Lead Counsel for filing) proof, by declaration, and affirming that Notice has been implemented in accordance with the Settlement Agreement mailing, and this Order, and identifying any Settlement Class Members who timely and validly requested exclusion from the Settlement Class.**

10. Defendants shall pay to the Settlement Administrator the costs of Class Notice, when such amounts are incurred and become due and owing, with such payment to be deducted from the Settlement Amount. In no event shall Defendants bear any responsibility for such fees, costs, or expenses, except as otherwise provided in the Settlement Agreement.

11. All Settlement Class Members (*see* ¶ 26 of the Settlement Agreement) shall be bound by all terms of the Settlement and any Final Approval Order and Judgment entered by the Court if the Settlement is approved by the Court.

12. Any person or entity falling within the definition of the Settlement Class may request to be excluded from the Settlement Class by sending a “Request for Exclusion”. A Request for Exclusion must be sent by mail, shall include the name (and former names, if any), current address, telephone number, and the last four (4) digits of a tax ID of the individual or entity and state that “I wish to opt out from the *ClassPass* settlement.” The request must be mailed to the Settlement Administrator at the addresses provided in the Notice and be postmarked no later than forty-five (45) days after the Short Form Notice is mailed to Settlement Class Members. A Request for Exclusion that (1) does not include all of the foregoing information, (2) does not contain the proper signature, (3) is sent to an address other than the one designated in the Notice, or (4) is not sent within the time specified, shall be invalid, and the Class Member filing such an invalid request shall be a Settlement Class Member and be bound by the Settlement Agreement, if approved. All Class Members who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Settlement Agreement, shall not share in the distribution of the Settlement Fund, and shall not be bound by the Settlement Agreement or Judgment.

13. The Settlement Administrator shall cause to be provided to Class Counsel and Defendants’ counsel a written list of all persons who have submitted Requests for Exclusion promptly.

14. Any objector may appear at the Final Approval Hearing, in person, or virtually if available and authorized by the Court, or through an attorney retained at his or her own expense,

but such appearance shall not be a prerequisite to the Court's consideration of any timely-filed objection, provided, however, that no Settlement Class Member or any other person or entity shall be heard or entitled to contest any of the foregoing, unless the Notice of Objection is postmarked and mailed to the Settlement Administrator no later than (45) calendar days from the mailing of the Short Form Class Notice. Any such Notice of Objection must identify the objector's full business name, address, telephone number, and the last four digits of the objector's tax ID; the case name and number; a statement of the objector's basis for any objections to the Parties' Settlement; a statement advising whether the objector plans to address the Court at the Final Approval Hearing and any legal briefs, papers or memoranda the objector proposes to submit to the Court; and, if the objector is represented by counsel, the name and address of his or her counsel. Any person or entity that fails to object in the manner prescribed herein shall be deemed to have waived his, her or its objections and will forever be barred from making any such objections in the Action.

15. The application by Co-Lead Counsel for attorneys' fees and/or expenses, and the application by Named Plaintiffs for service awards, shall be filed and served no later than fourteen (14) calendar days prior to the objection deadline set forth in ¶ 14, and promptly after filing be made available to the public on the Settlement Website. All other papers in support of final approval of the Settlement Agreement, and any reply papers in opposition to objections to the application by Co-Lead Counsel for attorneys' fees and/or expenses, or the application by Named Plaintiffs for service awards, if any, shall be filed and served seven (7) calendar days prior to the Fairness Hearing.

16. At or after the Fairness Hearing, the Court shall determine whether the Settlement Agreement, any requests for service awards by Named Plaintiffs, and any application for attorneys' fees and reimbursement of expenses by Co-Lead Counsel, should be finally approved.

17. All reasonable expenses incurred in identifying and notifying potential Settlement Class Members as well as administering the Settlement Fund shall be paid as set forth in the Settlement Agreement. In the event the Effective Date does not occur, all amounts paid into or accrued in the QSF shall be returned to Defendants within seven (7) calendar days of the Agreement becoming void or otherwise of no further force and effect.

18. Defendants have expressly denied and continue to deny all claims, contentions, and charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, and/or omissions alleged, or that could have been alleged in the Action, and as such neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations, documents, actions, or proceedings connected with it shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out the Settlement Agreement by Defendants, shall be referred to, offered or received as evidence, concession, presumption, or inference of any wrongdoing by Defendants in any pending or future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, as defined in the Agreement, or as otherwise required by law.

19. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to Settlement Class Members, and the Court retains jurisdiction to consider all



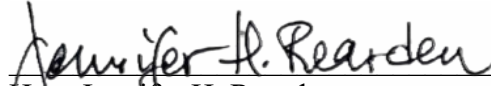
further applications arising out of or connected with the Settlement Agreement. To the extent practicable, Co-Lead Counsel shall cause the Settlement Administrator to promptly give notice of any Court-ordered changes of schedule or any modifications of deadlines to be published on the Settlement Website. The Court may approve the Settlement Agreement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

20. All proceedings in the Action are stayed until further order of the Court, except as may be necessary to implement the Settlement Agreement or comply with the terms thereof. Pending final determination of whether the Settlement Agreement should be approved, neither Named Plaintiffs, nor any Settlement Class Member, either directly, by representation, or in any other capacity, shall commence or prosecute against any of the Releasees any action or proceeding in any court or tribunal asserting any of the Released Claims.

21. If: (a) the Settlement Agreement is terminated by Defendants pursuant to Section 52(e) thereof; (b) any specified condition to the Settlement Agreement is not satisfied and the Settlement is terminated as provided in the Settlement Agreement; or (c) for whatever reason, the Settlement does not receive Final Approval or is otherwise rescinded, then the Settlement Agreement, including any amendment(s) thereto, and this Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each Party shall be restored to his, her, or its respective position as it existed prior to the execution of the Settlement Agreement. Further, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void, shall be of no further force or effect, and shall not be used, cited, or referred to for any purposes whatsoever in the Action or in any other case or controversy.

IT IS SO ORDERED.

DATED: June 29, 2023

  
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Hon. Jennifer H. Rearden  
United States District Judge

At least forty-eight hours before the Fairness Hearing, counsel shall email to the Court the names and telephone numbers of those who will have speaking roles at the conference, and the Court will provide call-in information to those counsel. All others — *i.e.*, counsel who will not have speaking roles and members of the public — may listen to the hearing by dialing (646) 453-4442 and entering Conference ID 243 601 751, followed by the pound (#) key.

The Clerk of Court is directed to terminate ECF Nos. 92 and 101 .