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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

JCK LEGACY COMPANY, et al.,	Main Case No.
Debtors.	20-10418-mew

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

June 15, 2022  
11:02 AM

B E F O R E:  
HON. MICHAEL E. WILES  
U.S. BANKRUPTCY JUDGE

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2 Fairness Hearing

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A P P E A R A N C E S (All present by video or telephone):

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CALLAHAN & BLAINE ATTORNEYS AT LAW

Attorneys for Becerra Class

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BY: MICHAEL SACHS, ESQ.

ALSO PRESENT:

WILLIAM A. BRANDT, JR., GUC Recovery Trustee

YALE S. BOGEN, Development Specialists, Inc.

1 P R O C E E D I N G S

2 THE COURT: Good morning, everybody. Are the parties  
3 ready to proceed on the JCK matter?

4 MR. CROWLEY: Good morning, Your Honor. We are ready  
5 to proceed. It's Leo Crowley, representing William Brandt, in  
6 his capacity as the trustee of the GUC recovery trust. With me  
7 in the virtual courtroom is Mr. Brandt, Mr. Yale Bogen, who is  
8 with Mr. Brandt's company, and who has been involved in various  
9 aspects of the case.

10 Can Your Honor hear me okay?

11 THE COURT: Yes, I can.

12 MR. CROWLEY: Thank you. And then also with me is my  
13 associate, Kwame Akuffo, who has been involved since the  
14 outset; Paula Webber, a partner of mine based in California,  
15 who specializes in employment litigation and has contributed  
16 some insights to our work on this; and Michael Sachs, who is  
17 the class counsel for the Becerra class.

18 The only item on the agenda today is the final hearing  
19 on approval of the Becerra class action. We had a preliminary  
20 hearing on this in March of this year. At that time, Your  
21 Honor received into evidence the supporting declarations of Mr.  
22 Brandt and Ms. Weber, as well as the moving papers themselves  
23 and exhibits, all under docket 410. We request that those  
24 declarations and the entire record of the preliminary hearing  
25 and supporting papers be incorporated into the record for

1 today's hearing.

2 THE COURT: Okay.

3 MR. CROWLEY: All right. We have also filed  
4 certificates and affidavits of service on the class members, as  
5 well as under the Class Action Fairness Act on the service  
6 list. Those are at dockets 1414, 1419, 1441 and 1442. And we  
7 request that those be received into evidence also in order to  
8 establish compliance with the procedural requirements laid out  
9 in the preliminary approval order.

10 THE COURT: All right. I'll consider all of those --  
11 everything to be part of the record before me today.

12 (Certificates and affidavits of service found at dockets  
13 1414, 1419, 1441 and 1442 were hereby received into evidence as  
14 of this date.)

15 MR. CROWLEY: And then lastly, we also offer into  
16 evidence the supplemental declaration of William Brandt, which  
17 was filed yesterday, at docket 1471, and the declaration of  
18 Michael Sachs, at docket 1472. They are both here and  
19 available to be questioned, if Your Honor has any questions.  
20 Ms. Weber, who submitted an earlier declaration, is here also,  
21 and her declaration was received at the preliminary hearing.  
22 So I would request that the supplemental declaration of Mr.  
23 Brandt and the declaration of Mr. Sachs, and the exhibits to  
24 both of them be received into evidence for today.

25 THE COURT: Okay. I don't think there's anybody on

1 the phone who would object to it.

2 MR. CROWLEY: Right. And then --

3 THE COURT: I'll accept them into evidence.

4 (The supplemental declarations of Mr. Brandt and Mr.  
5 Sachs, with accompanying exhibits, were hereby received into  
6 evidence as of this date.)

7 MR. CROWLEY: We don't propose to call anybody as a  
8 live witness. But if Your Honor has questions, either at this  
9 time, or at some later point during the hearing, obviously  
10 they're all available.

11 THE COURT: Just a couple quick questions. Mr. Sachs,  
12 as counsel to the class, I take it you are in favor of the  
13 settlement and believe it is reasonable, from the perspective  
14 of the class?

15 MR. SACHS: That is correct, Your Honor.

16 THE COURT: Okay. On your fee applications, I take it  
17 that the amount that actually would be recovered by your firm  
18 would be whatever the payout on that claim would be. Is that  
19 correct?

20 MR. SACHS: That is my understanding, Your Honor.

21 THE COURT: And so the actual allowed claim is less  
22 than your time records, and the actual payout is going to be a  
23 small fraction of that. Is that correct?

24 MR. SACHS: That's correct, Your Honor.

25 THE COURT: And Mr. Crowley, I understand that the

1 allowed claim in favor of the class members is close,  
2 nominally, to what their actual claimed damages would be, but  
3 that their actual payouts would be, at most, likely to be three  
4 to five percent. Is that correct?

5 MR. CROWLEY: That is correct. Well, yes, with one  
6 qualifying -- two qualifications, Your Honor. One is the  
7 allowed claim in favor of the class, I think, sort of, in my  
8 mind, represents the highest amount that they could recover as  
9 principal on their claim if the litigation proceeded in state  
10 court. I think there are some reasons and defenses why they  
11 might actually end up recovering less than that. But in  
12 consideration of this being a settlement, and a consideration  
13 of the risk that the class continues to face with further  
14 litigation, the claim represents a hundred percent of the  
15 maximum principal, but there is not separate provision for pre-  
16 judgment interest.

17 THE COURT: I understand that. All right. That seems  
18 reasonable. And from the debtors' perspective, it seems  
19 reasonable not to pay a lot of money when the actual payouts  
20 are going to be relatively low.

21 I see that two members submitted proofs of claim and  
22 that you asked them to withdraw them. Do they understand, if  
23 they withdraw them, just how low the road of recoveries are  
24 likely to be? Not that they would probably do any better with  
25 their own claim, but do they understand that?



1 MR. CROWLEY: I don't want to put Mr. Akuffo on the  
2 spot, but he's here. He just gave me a thumbs up. I mean, he  
3 can convert his line to live. He had the conversations with  
4 them.

5 THE COURT: Okay.

6 MR. CROWLEY: So --

7 THE COURT: I just want to make sure they understand  
8 that, because I didn't see it in the letters themselves.

9 And then as to the opt-out, we've had this problem  
10 before. There is a lot of misunderstanding, and to the extent  
11 somebody has opted out, but didn't really understand the option  
12 that was available, and wishes to rescind the opt-out, I don't  
13 have a problem with that.

14 MR. CROWLEY: Okay. So we may want to put something  
15 in the final order on that then, and submit a revised order, if  
16 that's okay with you, Your Honor.

17 THE COURT: That's fine. All right. I've reviewed  
18 all the papers. As I've said in prior hearings, I have the  
19 unusual obligation, in this particular regard, of deciding that  
20 a settlement is fair and reasonable, from the perspective of  
21 the estate and its constituents, and also because of the  
22 application of Rule 23, of deciding that the settlement is fair  
23 and reasonable from the perspective of the class members and  
24 that the fees to be awarded are reasonable.

25 The dollar amount of the allowed claim is higher than

1 the original amount that was claimed, but is close to what Mr.  
2 Brandt has reasonably related the damage claim might be,  
3 without inclusion of pre-judgment interest. In light of the  
4 likely recoveries on that claim, in the range, at most, of  
5 three to five percent, it is entirely reasonable, from the  
6 perspective of the debtor and the perspective of the class, to  
7 settle for an allowed claim in that amount.

8 As to the attorneys' fees, the nominal amount of the  
9 allowed claim is less than the amount that would be generated  
10 by the accrued time records, substantially less, and the actual  
11 payout on that claim is relatively small. Arguably, the  
12 attorneys could have asked for payments of fees out of actual  
13 recoveries, instead of taking it in the form of an allowed  
14 claim, but they have not done so. And under of all the  
15 circumstances, I think, given what the actual payouts would be,  
16 and the fact that they're being taken in the form of an allowed  
17 claim, it is entirely reasonable, and I'll approve the  
18 settlement.

19 MR. CROWLEY: Thank you, Your Honor. So we'll look  
20 at -- I'll take a quick look at the proposed final order and  
21 evaluate whether we need to put in something about the opt-out,  
22 and communicate either way with your chambers on that. We'll  
23 either submit a slightly revised order or indicate that we're  
24 comfortable with the order as is.

25 THE COURT: Very good.

1 MR. CROWLEY: I mean, Your Honor has said on the  
2 record that you don't have a problem with the opt-out being  
3 rescinded, so maybe we just let it go like that, if that's okay  
4 with you?

5 THE COURT: You might want the cover of making sure  
6 that it's in the order. And did we put something -- we did  
7 this once before. Did we put it in the order?

8 MR. CROWLEY: I don't think it's in the order, Judge.  
9 Let me get it in front of me here. I don't have -- let me just  
10 get the proposed final order in front of me. I apologize. I  
11 should have prepared on this ahead of time.

12 THE COURT: You just look at the order. It's not too  
13 hard to put it in there, and it's probably better, from  
14 everybody's perspective, to have it in there.

15 MR. CROWLEY: Yeah, right now it just says if you  
16 don't opt out, you're bound. So by inference, if you opted  
17 out, you're truly opted out. So we'll put something in that  
18 modifies that.

19 THE COURT: Okay, very good. All right. Anything  
20 else for this morning then?

21 MR. CROWLEY: Nothing from us, Your Honor.

22 THE COURT: Thank you all then. In that case, we are  
23 adjourned.

24 IN UNISON: Thank you, Your Honor.

25 (Whereupon these proceedings were concluded at 11:12 AM)

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I N D E X

E X H I B I T S

GUC RECOVERY TRUSTEE'S	DESCRIPTION	MARKED	ADMITTED
Certificates and affidavits of service			6
found at dockets 1414, 1419, 1441, 1442			
The supplemental declarations of			7
Mr. Brandt (docket 1471)			
and Mr. Sachs (docket 1472),			
along with accompanying exhibits			

RULINGS:	PAGE	LINE
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the preliminary hearing and supporting		
papers (docket 410) are incorporated into		
the record for today's hearing.		
Settlement is approved.	10	17

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Sharona Shapiro*

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Sharona Shapiro (CET-492)  
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Date: June 15, 2022

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