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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE NEW YORK ROAD RUNNERS LITIGATION

Case No. 1:16-cv-00450-KBF

Case No. 1:16-cv-00791-KBF

**FINAL ORDER AND JUDGMENT**

The Court, having considered the Settlement Stipulation dated September 9, 2016, including all Exhibits thereto (the "Stipulation"), between plaintiffs Charles Konopa ("Konopa") and Sandra Del Guercio ("Del Guercio") (together, "Plaintiffs"), on behalf of themselves and others similarly situated, and defendant New York Road Runners, Inc. ("NYRR" or "Defendant"), having held a hearing on February 10, 2017, having considered all of the submissions and arguments with respect to thereto, and otherwise being fully informed, and good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. This Final Judgment and Order of Dismissal (the "Judgment") incorporates herein and makes a part hereof the Stipulation. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.
2. The Court has personal jurisdiction over Plaintiffs, the Settlement Class Members, and Defendant for purposes of this Action and Settlement, and has subject matter jurisdiction to approve the Stipulation and the terms and conditions of the settlement set forth therein (the "Settlement").
3. Pursuant to Federal Rule of Civil Procedure 23, the Court confirms certification of the following Class for purposes of this Settlement only, as ordered by the Court in its September 15, 2016 Preliminary Approval Order:

All persons residing in the United States and the territories of the United States who: (i) sought “non-guaranteed entry” by entering the drawing conducted by Defendant for each of the 2010-2014 New York City Marathons and 2010-2015 NYC Half Marathons (the “Covered Races”), and/or (ii) received “guaranteed entry” through one of Defendant’s “Official Charity Partners” for each of the Covered Races.

4. The Settlement Class excludes any Settlement Class Member who has submitted a valid and timely request for exclusion from the Settlement Class in accordance with the procedures and deadlines set forth in the Notice and who has not subsequently withdraw that request, whose names appear on Exhibit A hereto, and the legal representatives, agents, affiliates, heirs, successors-in-interest, or assigns of any such excluded person.

5. The Court confirms that certification of the Settlement Class for purposes of this Settlement only met the requirements of Federal Rule of Civil Procedure 23 as follows: (a) the number of Settlement Class Members is so numerous and geographically dispersed that joinder of all Settlement Class Members is impracticable; (b) questions of law or fact common to the Settlement Class Members predominate over any individual questions; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class Members they seek to represent; (d) Plaintiffs fairly and adequately represent the interests of the absent Settlement Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

6. Plaintiffs are hereby confirmed as the representatives of the Settlement Class for purposes of the Settlement.

7. Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”) and Abbey Spanier LLP (“Abbey Spanier”), having met the requirements of Federal Rule of Civil Procedure 23(g)(1), are hereby confirmed as Lead Class Counsel for purposes of the Settlement.

8. The Court finds that the Notice requirements of the Preliminary Approval Order

were all implemented in accordance with the terms of the Stipulation and the Court's Preliminary Approval Order, and:

(a) constituted the best practicable notice to Settlement Class Members under the circumstances;

(b) were reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of the Action; (ii) their right to exclude themselves from the Settlement Class; (iii) their right to object to any aspect of the proposed Settlement (including the request for attorneys' fees and expenses); (iv) their right to appear at the Final Approval Hearing, either on their own or through counsel hired at their own expenses, if they are not excluded from the Settlement Class; and (v) the binding effect of the proceedings, rulings, orders, and judgments in the Action, whether favorable or unfavorable, on all persons who are not excluded from the Settlement Class;

(c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the Class Action Fairness Act of 2005 ("CAFA"), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

9. The Court finds that Defendant has provided notice pursuant to CAFA, 28 U.S.C. § 1715.

10. Pursuant to Federal Rule of Civil Procedure 23, the Court finds that the terms and provisions of the Stipulation were entered into by the Settling Parties at arms' length, without

collusion, and in good faith, and are fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement in accordance with its terms and conditions.

11. The Action and all Released Claims are dismissed with prejudice except in regard to claims concerning the 2015 Marathon which are dismissed without prejudice. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

12. All persons whose names appear on Exhibit A hereto are hereby excluded from the Settlement Class, are not bound by this Judgment, and may not make any claim with respect to or receive any benefit from the Settlement.

13. All Settlement Class Members shall be permanently enjoined, barred, and restrained from bringing, commencing, prosecuting, or asserting any claims, actions, or causes of action for contribution, indemnity, or otherwise against the Defendant seeking as damages or otherwise the recovery of all or any part of any liability, judgment, or settlement that it pays or is obligated to pay or agrees to pay to the Settlement Class or any Settlement Class Member arising out of, relating to, or concerning any acts, facts, statements, or omissions that were or could have been alleged in the Action, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, third-party claims, or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum.

14. The Court finds that all parties to the Action and their counsel have complied with the requirements Federal Rule of Civil Procedure 11 as to all proceedings herein.

15. The Court notes that there have been no objections to the Settlement.

16. Neither this Final Order and Judgment, the Stipulation, nor any of the negotiations, documents, proceedings, and acts performed in connection with them shall be:

(a) offered or received against Defendant as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to or for any other reason as against Defendant, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) construed as an admission, acknowledgement, concession, presumption, or recognition by Defendant or any of the Released Persons of any failure, wrongdoing, fault, liability, or damages whatsoever; of any merit to any actual or contemplated Claim or allegation against Defendant or any of the Released Persons; or of any lack of merit to any actual or contemplated defense;

(c) interpreted as a presumption, concession, or admission by Plaintiffs of any lack of merit to any claim of any fault, liability, or wrongdoing as to any facts or Claims alleged or asserted in the action, or in any other action or proceeding; or

(d) interpreted, construed, deemed, invoked, offered, admitted, or received in evidence or otherwise used by any member of the proposed Settlement Class or the Settling Parties to the Action or in any other action or proceeding (whether civil, criminal, or administrative).

17. This Final Order and Judgment shall not be construed or used as a presumption, concession, or admission by or against Defendant of any fault, wrongdoing, breach, or liability.

18. The Settlement is approved as fair and reasonable, and the Parties and the Settlement Administrator are directed to consummate and administer the Settlement in

accordance with the terms and provisions of the Stipulation and this Final Order and Judgment.

19. Class Counsel is hereby awarded \$ 650,000 <sup>(KBP)</sup> in attorneys' fees, which the Court finds to be fair and reasonable, and \$ 8,485.29 <sup>(KBP)</sup> in reimbursement of costs and other expenses. The Fee and Expense Award shall be paid by Defendant NYRR to Lead Class Counsel pursuant to the terms of the Stipulation.

20. Plaintiffs Konopa and Del Guercio are hereby awarded \$ 2500 <sup>(KBP)</sup> each as incentive compensation for their service on behalf of the Settlement Class, which shall be paid by Defendant NYRR to Lead Class Counsel on their behalf.

21. Exclusive jurisdiction is hereby retained over the Settling Parties and the Settlement Class Members for all matters relating to the Action, including: (i) the administration, interpretation, effectuation, or enforcement of the Stipulation and this Judgment; (ii) disbursement of the race credits; and (iii) any application for fees and expenses incurred by the Settlement Administrator in connection with administering the Settlement. Solely for purposes of such suit, action, or proceeding, to the fullest extent they may effectively do so under applicable law, Defendant, Plaintiffs, and the Settlement Class Members are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum.

22. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

23. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by an in accordance with the Stipulation and shall be vacated and, in such event, all

orders entered, including those certifying a settlement class, and releases delivered in connection herewith, shall be null and void to the extent provided by and in accordance with the Stipulation.

24. The provisions of this Judgment constitute a full and complete adjudication of the matter considered and adjudged herein. ~~There is no just reason for delay in the entry of this~~

~~Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Federal~~

~~Rule of Civil Procedure 54(h)~~

The Clerk of Court is directed to enter judgment in this matter and to terminate this actis. (KBF)

IT IS SO ORDERED.

DATED: 2/10/17

  
HONORABLE KATHERINE B. FORREST  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

Requests for Exclusion

1. Joseph McNamara
2. David Son
3. Melinda K. Scott
4. V Gravagna
5. Kurt J. Werling
6. Danny Kevin Ryan
7. Nathan Wentworth
8. Bobby Newman
9. Deena Greenberg
10. Vilma Ruiz
11. James Baertsch
12. Sarah Frazier
13. Caroline E. Nagy
14. Kevin Oberholzer
15. Paul Marron
16. Janet Elaine Cook
17. Edward Rossier
18. Jean-Philippe De Rycker
19. Evelyn Rivera
20. Tim Davis
21. Ira L. Van Irvin
22. Ramona N. Van Irvin
23. Kizzy Gonzalez-Burgos
24. Annebeth Kroeskop
25. Laura A. Provard
26. Chilton E. Harper
27. Dr. Richard Sheppard