

***SHEERICE MILTON, on behalf of herself and all others similarly situated, Plaintiff, -
against- BELLS NURSES REGISTRY & EMPLOYMENT AGENCY, INC., Defendant.***

Supreme Court of New York, Kings County

December 14, 2015, Decided; December 21, 2015, Filed

Index No.: 502303/2015

Reporter

2015 N.Y. Misc. LEXIS 4604

SHEERICE MILTON, on behalf of herself and all others similarly situated, Plaintiff, -against- BELLS NURSES REGISTRY & EMPLOYMENT AGENCY, INC., Defendant.

Notice: NOT APPROVED BY REPORTER OF DECISIONS FOR REPORTING IN STATE REPORTS.

Core Terms

settlement, attorneys', awarding, approving, class member, final approval, class action, courts, class representative, one-third, contingency, lodestar, costs, risks, settlement fund, prosecuting, multiplier, named plaintiff, service fee, compensate, settling, factors, cases

Judges: [*1] HON. SYLVIA G. ASH, JSC.

Opinion by: SYLVIA G. ASH

Opinion

The above-entitled matter came before the Court on Plaintiff's Motion for Final Approval of Class Action Settlement ("Motion for Final Approval").

FINAL JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff filed this Class Action Complaint in Kings County Supreme Court on February 27, 2015 ("the Litigation"). The Complaint asserted claims under the New York Labor Law ("NYLL") and the Fair Labor Standards Act ("FLSA-), claiming that Bells Nurses Registry & Employment Agency, Inc. ("Defendant") failed to compensate Plaintiff and others similarly situated time and one-half their regular hourly wage for hours worked in excess of forty per workweek, failed to pay spread-of-hours pay, and failed to provide proper wage notices and wage statements.

After prolonged settlement negotiations, the Parties executed a Class-wide Settlement Agreement and Release ("Settlement

Agreement") on or about March 13, 2015. Plaintiff filed a motion for Preliminary Approval of the Settlement Agreement on March 13, 2015. On April 29, 2015, the Court preliminarily approved the Settlement Agreement, appointed Fitapelli & Schaffer, LLP ("F&S") as Class [*2] Counsel, ordered that notices be sent to Class Members, and set October 28, 2015 as the date for a Fairness hearing.

On August 18, 2015, Plaintiff filed a Motion for Final Approval of the Settlement Agreement. Defendant took no position with respect to Plaintiff's Motion for Final Approval, and did not object to Plaintiff's request for attorneys' fees, costs, service awards, and payment to the claims administrator.

The Court held a fairness hearing on October 28, 2015. No Class Member objected to the settlement, and only one Class Member requested exclusion from the settlement.

Having considered the Motion for Final Approval, the supporting Affidavit of Brian S. Schaffer, the oral argument presented at the October 28, 2015 Fairness Hearing, and the complete record in this matter, for the reasons set forth therein and stated on the record at the October 28, 2015 Fairness Hearing, and for good cause shown:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Certification Of The Settlement Class

1. This Court certifies the following class under Article 9 of the New York Civil Practice Law and Rules ("CPLR") for settlement purposes:

All current and former employees of Bells Nurses Registry & Employment Agency, Inc. ("Defendant") who performed [*3] work as Nursing Assistants (excluding work performed as a live-in nurse) in New York at Bells Nurses Registry at any time from January 1, 2011 and December 31, 2014.

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Approval Of The Settlement Agreement

2. The Court hereby grants Plaintiff's Motion for Final Approval and approves the settlement as set forth in the Settlement Agreement.

3. CPLR § 908 requires judicial approval for any compromise of claims brought on a class basis. In determining whether to approve a class action settlement, courts examine "the fairness of the settlement, its adequacy, its reasonableness and the best interests of the class members." Fiala v. Metro, Life Ins. Co., 899 N.Y.S.2d 531, 537 (Sup. Ct. N.Y. County 2010) (citing Klein v. Robert's Arm Gourmet Food, Inc., 28 A.D.3d 63, 73 (N.Y. App. Div. 2d Dep't 2006)); Fernandez v. Legends Hospitality, LLC, No. 152208/2014, 2015 N.Y. Misc. LEXIS 2193, at *3 (Sup. Ct. N.Y. County June 20, 2015); Ryan v. Volume Servs. Am., No. 65970/2012, 2013 N.Y. Misc. LEXIS 932, at *1 (Sup. Ct. N.Y. County Mar. 7, 2013).

4. Relevant factors in determining whether a settlement is fair, reasonable, and adequate include "the likelihood of success, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact." In re Coll Indus. Shareholder Litig., 155 A.D.2d 154, 160 (N.Y. App. Div. 1st Dep't 1990) (internal quotation marks omitted). New York courts regularly refer to the federal standards in making this determination, in recognition that the two statutory schemes are similar. Fernandez, Misc. [*4] LEXIS 2193, at *3 (citing Fiala, 899 N.Y.S.2d at 537-38 (collecting cases)).

5. A court should also "balance[e] the value of [a proposed] settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." Ryan, 2013 N.Y. Misc. LEXIS 932, at *3 (citing Klein, 28 A.D.3d at 73). All or these factors weigh in favor of approving the settlement.

6. In reaching the settlement, Class Counsel took into account the risks of establishing liability, and also considered the time delay, and financial repercussions in the event of trial and appeal by Defendant. The settlement negotiations were at all times hard fought and arm's length between parties represented by counsel experienced in wage and hour law, and they have produced a result that Plaintiff's Counsel believes to be in the best interests of the Class in light of the costs and risks of continued litigation. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation omitted). Additionally, Defendant has and will continue to vigorously contest Plaintiff's claims if the action does not settle. In light of the strengths and weaknesses of the case, the settlement easily falls within the range of reasonableness because it achieves a significant benefit for

Plaintiff and the Class Members in the face [*5] of significant obstacles. While there is a possibility that the Class could recover more money, including interest, after trial, the Settlement provides the significant benefit of a guaranteed and substantial payment to Class Members, rather than "speculative payment of a hypothetically larger amount years down the road." Ryan, 2013 N.Y. Misc. LEXIS 932, at *4 (citing Teachers Ret. Sys. v. A.C.L.N. Ltd., No. 01 Civ. 11814 (MP), 2004 WL 1087261, at *5 (S.D.N.Y. May 14, 2004)). "The favorable reception by the Class also constitutes strong evidence of the fairness of the proposed Settlement and supports judicial approval," Ryan, 2013 N.Y. Misc. LEXIS 932, at *4; see also DeLeon v. Wells Fargo Bank, N.A., No. 12 Civ. 4494 (RLE), 2015 WL 2255394, at *5 (S.D.N.Y. May 7, 2015) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness."); RMED Int'l Inc. v. Sloan's Supermarkets, Inc., No. 94 Civ. 5587 (PKL)(RL), 2003 WL 21136726, at *1 (S.D.N.Y. May 15, 2003).

Service Awards To The Class Representative

7. The Court finds the service award of \$8,000 for the class representative. Sheerice Milton, reasonable given the significant contributions she made to advance the prosecution and resolution of the lawsuit. This award shall be paid from the settlement fund.

8. A court may grant service fee enhancements in a class action. Such awards "reward[] the named plaintiff's for the effort and inconvenience of consulting with counsel [*6] over the many years [a] case was active and for participating in discovery . . ." Cox v. Microsoft Corp., No. 105193/2000, 26 Misc.3d 1220(A), at *4 (Sup. Ct. N.Y. County Feb. 2, 2007); see also Mark Fabrics Inc. v. GMAC Commercial Credit No. 604631/02, 2005 N.Y. Misc. LEXIS 3566 (Sup. Ct. N.Y. County Dec. 22, 2005) (granting enhancement award). Enhancement awards "are particularly appropriate in the employment context ... [where] the plaintiff is often a former or current employee of the defendant, and thus . . . he has, for the benefit of the class as a whole, undertaken the risks of adverse actions by the employer or co-workers," Tiro v. Pub. House Investments, LLC, No. 11 CIV. 7679 CM. 2013 WL 4830949, at *11 (S.D.N.Y. Sept. 10, 2013); see also Frank v. Eastman Kodak Co., 228 F.R.D. 174, 187 (W.D.N.Y. 2005).

9. Plaintiff expended considerable time and effort to assist Class Counsel with the case. Plaintiff's assistance included, such as informing counsel of detailed factual information regarding her employment with Defendant initially and as the case progressed, providing counsel with relevant documents in her possession, participating in litigation strategy, assisting counsel to prepare for settlement discussions, reviewing and

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commenting on the terms of the settlement, and informing putative Class Members of the lawsuit and encouraging them to participate in [*7] the settlement. As such, her actions exemplify the very reason courts award service fees. See [Frank, 228 F.R.D. at 187](#) (recognizing the important role that plaintiff's play as the "primary source of information concerning the claim[.]" including by responding to counsel's questions and reviewing documents); [Parker v. Jekyll & Hyde Enm't Holdings, L.L.C.](#), No. 08 Civ. 7670 ([BSJ/JCF](#)), 2010 WL 532960, at *1 (S.D.N.Y. Feb. 9, 2010) (recognizing efforts of plaintiffs including meeting with counsel, reviewing documents, formulating theory of case, identifying and locating other class members to expand settlement participants, and attending court proceedings).

10. The risks Plaintiff assumed in prosecuting this action also support the service fees. In the employment context, where workers are often blacklisted if they are considered "trouble makers," class representatives are particularly vulnerable to retaliation. See, e.g., [Tiro, 2013 WL 4830949](#), at *11; [Silherblatt v. Morgan Stanley](#), 524 F. Supp. 2d 425, 435 (S.D.N.Y. 2007) ("A class representative who has been exposed to a demonstrable risk of employer retaliation or whose future employability has been impaired may be worthy of receiving an additional payment, less other be dissuaded."). Even where there is not a record of actual retaliation, service fees are appropriate in [*8] recognition of the risk of retaliation assumed by lead plaintiffs for the benefit of absent class members. [Frank, 228 F.R.D. at 187-88](#).

11. The service award of \$8,000 to the named Plaintiff is reasonable and well within the range awarded by courts in similar matters. See, e.g., [Ryan, 2013 N.Y. Misc. LEXIS 932](#), at *5 (approving a service award of \$10,000 to named plaintiff); [Flynn v. N.Y. Dolls Gentlemen's Club](#), No. 13 Civ. 6530 ([PKC/RLE](#)), 2015 U.S. Dist. LEXIS 82772, at *4 (S.D.N.Y. Apr. 27, 2015) (approving a service award of \$10,000 to the named plaintiff); [Sukhnandan et al. v. Royal Health Cure of Long Island LLC](#), No. 12 Civ. 4216 ([RLE](#)), 2014 U.S. Dist. LEXIS 105596, at *44 (S.D.N.Y. July 31, 2014) (\$10,000 service fee to each of four named plaintiffs reasonable); [Tiro, 2013 WL 4830949](#), at *11 (\$10,000 service award for each named plaintiff reasonable); [Capsolas v. Pasta Resources Inc.](#), No. 10 Civ. 5595 ([RLE](#)), 2012 WL 4760910, at *9 (S.D.N.Y. Oct. 5, 2012) (approving service awards of \$20,000 and \$10,000 for class representatives in wage and hour action); [Lovaglio v. W & E Hospitality Inc.](#), No. 10 Civ. 7351 2012 WL 2775019, at *4 (S.D.N.Y. July 6, 2012) (approving service awards of \$10,000 to three class representatives in wage and hour action); [Matheson v. T-Bone Restaurant, LLC](#), No. 09 Civ. 4212 ([DAB](#)), 2011 WL 6268216, at *9 (S.D.N.Y. Dec. 13, 2011) (approving a service award of

\$45,000 for a class representative in a wage and hour action); [Willix v. Healthfirst, Inc.](#), No. 07 Civ. 1143 ([ENV/RER](#)), 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (finding service awards in wage and hour action of \$30,000 and \$15,000 to be reasonable); [Mentor v. Imperial Parking Sys., Inc.](#), No. 05 Civ. 7993 ([WHP](#)), 2010 WL 5129068, at *1-2 (S.D.N.Y. Dec. 15, 2010) (granting \$40,000 and \$15,000 service awards in wage and hour [*9] action.); [Duchene v. Michael Cetta, Inc.](#), No. 06 Civ. 4576 (PAC)([GWG](#)), 2009 WL 5841175 (S.D.N.Y. Sept. 10, 2009) (approving service payments of \$25,000 and \$10,000 in wage and hour action).

The Claims Administrator's Fees Should Be Approved

12. The Court confirms Angeion Group as the Claims Administrator. The Court approves Plaintiff's request for the Claims Administrator to be paid out of the settlement fund. The estimated administration costs are \$15,175. However, this number is subject to change, as significant work still remains to complete the administration. Claims Administrator fees in this amount are routinely found reasonable, given the extensive work that has been and will continue to be done in administering the Settlement. See, e.g., [Fernandez](#), Misc. LEXIS 2193, at *9 (approving administration costs of \$15,000); [Ryan, 2013 N.Y. Misc. LEXIS 932](#), at *8 (approving administration costs of \$15,000 to \$17,000). Therefore, the Court will approve all reasonable fees of the Claims Administrator, subject to Class Counsel's review of the Claims Administrator's invoices.

Awards of Fees and Costs To Class Counsel

13. On April 29, 2015, the Court appointed F&S as Class Counsel because they did substantial work identifying, investigating, litigating, and settling Plaintiff's [*10] and the Class Members' claims, have years of experience prosecuting and sealing wage and hour class actions, and are well-versed in wage and hour and in class action law. See NYSCEF Doc No. 12.

14. F&S are experienced employment attorneys with a very good reputation among the employment law bar and have years of litigation experience in wage and hour matters in State and Federal Courts. The firm has recovered millions of dollars for thousands of employees. See, e.g., [Fernandez, 2015 N.Y. Misc. LEXIS 2193](#), at *9-10; [Hamadon v. Hess Corp.](#), No. 12 Civ. 0250 (JLC), 2015 WL 3824230, at *2 (S.D.N.Y. June 18, 2015); [Carpenter v. Paige Grp., LLC et al.](#), No. 13 Civ. 4009 (GBD), 2015 U.S. Dist. LEXIS 82771, at *3-4 (S.D.N.Y. June 2, 2015) (approving Fitapelli & Schaffer, LLP as class counsel and granting final approval); [Monzon v. 103W77 Partners, LLC](#), Nos. 13 Civ. 5951(AT) et al., 2015 WL 993038, at *2 (S.D.N.Y. Mar. 5, 2015) (same): [Yazary v.](#)

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[HSBC Bank USA, N.A., No. 12 Civ. 3693 \(PGG\), 2013 WL 5492998, at *11 \(S.D.N.Y. Oct. 2, 2013\)](#) (granting final approval); [Sukhnandan, 2014 U.S. Dist. LEXIS 105596, at *9-10](#) ("noting that "[Fitapelli & Schaffer . . . will adequately represent the interests of the Class" when granting final approval); [Tiro, 2013 WL 2254551, at *3](#) ("Courts have repeatedly found [Fitapelli & Schaffer, LLP] to be adequate class counsel in wage and hour class and collective actions."); [Ryan, 2013 N.Y. Misc. LEXIS 932, at *9](#) ("[Fitapelli & Schaffer, LLP] are experienced employment attorneys with a good reputation among the employment law bar."); [Girault v. Supersol 661 Amsterdam, LLC; No. 11 Civ. 6835 \(PAL\), 2012 WL 2458172, at *2 \(S.D.N.Y. June 28, 2012\)](#) (appointing F&S as class counsel because they "did substantial work identifying, investigating, and [*11] settling Plaintiffs' and the class members' claims. have years of experience prosecuting and settling wage and hour class actions, and are well-versed in wage and hour law and in class action law"); [Lovaglio, 2012 WL 2775019, at *2-3; Matheson, 2011 WL 6268216, at *3](#). The experience of Class Counsel prosecuting large scale class and collective employment law actions on behalf of workers was directly responsible for bringing about the positive settlement in this case.

15. Class Counsel has committed substantial resources to prosecuting this case. Their work in litigating and settling this case demonstrates their commitment to the Class and to representing the best interests of the Class.

16. Class Counsel has a reputation for their willingness to commit the resources required to take on large companies in litigation-intensive lawsuits.

17. The Court hereby grants Class Counsel's request for attorneys' fees and awards Class Counsel \$87,509.67, which is one-third of the settlement fund.

18. The CPLR authorizes a court to grant attorneys' fees to class counsel who obtain a judgment on behalf of a class:

If a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees to the representatives [*12] of the class and/or to any other person that the court finds has acted to benefit the class based on the reasonable value of legal services rendered

[CPLR § 909.](#)

19. A court may calculate reasonable attorneys' fees by either the lodestar method (multiplying the hours reasonably billed by a reasonable hourly rate, then applying a multiplier based on more subjective factors) or based on a percentage of the

recovery. [Fiala, 899 N.Y.S.2d at 540](#). Where a settlement establishes a common fund, the percentage method is often preferable because "[t]he lodestar method has the potential to lead to inefficiency and resistance to expeditious settlement because it gives attorneys an incentive to raise their fees by billing more hours." [Ryan, 2013 N.Y. Misc. LEXIS 932, at *11-12; see also Cox, 26 Misc.3d 1220\(A\), at *3; Peck v. AT&T Corp. No. 601587/2000, 2002 N.Y. Misc. LEXIS 2026, at *26 \(Sup. Ct. N.Y. County July 26, 2002\)](#) ("The percentage of the recovery approach determines the reasonableness of the fee."). Similarly, "[t]he trend in [the Second] Circuit is toward the percentage method. . . which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of the litigation." [Wal-Mart Stores, Inc., 396 12.3d at 121](#) (internal quotation marks omitted): [see also Strougo v. Bassini, 258 F. Supp. 2d 254 \(S.D.N.Y. 2003\)](#) (collecting cases); [In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 483-85 \(S.D.N.Y. 1998\)](#) (collecting cases). [*13]

20. Recognizing the "significant risks" undertaken by attorneys who work on contingency, the New York State Court of Appeals has also upheld contingency fees of one-third or higher, where such fee arrangements are embodied in executed retainer agreements. [See In re Lawrence, __ N.E.3d __, 2014 WL 5430622 \(N.Y. Oct. 28, 2014\)](#) (upholding 40 percent contingency and stating that, "[a]s a general rule, we enforce clear and complete documents, like the retainer agreement, according to their terms.") (citation omitted).

21. Here, Class Counsel seeks one-third of the settlement fund as attorneys' fees pursuant to their retainer agreement with the class representative. This is well within the range of reasonableness and within the percentage regularly approved in class action and wage and hour suits. [See, e.g., Sukhnandan, 2014 U.S. Dist. LEXIS 105596, at *38](#) (noting that 33.3% is "consistent with the norms of class litigation in this circuit"): [Peck, 2002 N.Y. Misc. LEXIS 2026, at *27](#) ("Class action fees traditionally fall in the range of 15%-50%."); [Capsolas, 2012 WL 4760910, at *8](#) (awarding one-third of \$5.25 million fund in wage and hour case); [Toure v. Amerigroup Corp., No. 10 Civ. 5391 \(RLM\), 2012 WL 3240461, at *5](#) (13.D.N.Y. Aug. 6, 2012) (awarding one-third of \$4.45 million fund in misclassification case); [Willix, 2011 WL 754862, at *6](#) (awarding one-third of \$7.675 million settlement fund in FLSA and NYLL wage and hour action); [Clark v. Ecolab Inc., Nos. 07 Civ. 8623 \[*14\] \(PAC\) et al. 2010 WL 1948198, at *8-9 \(S.D.N.Y. May 11, 2010\)](#) (awarding 33% of \$6 million settlement fund in FLSA and multi-state wage and hour case); [Mohney v. Shelly's Prime Steak, No. 06 Civ. 4270 \(PAC\), 2009 WL 5851465, at *5 \(S.D.N.Y. Mar. 31, 2009\)](#) (awarding 33% of \$3,265,000 fund in FLSA and NYLL tip misappropriation case).

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22. In a claims made settlement, attorneys' fees should be based on the gross settlement amount, regardless of the number of claims actually made, because every putative class member could have claimed a portion of the fund if they wished to do so, *See e.g., Bezadi v. International Creative Mgmt Partners, LLC*, No. 14-CV-4382 (LGS), 2015 WL 4210906, *2 (S.D.N.Y. July 9, 2015) ("awarding attorneys' fees based on a percentage of the settlement amount rather than the amount paid is proper."); *see also Flynn v. N.Y. Dolls Gentlemen's Club*, 2015 U.S. Dist. LEXIS 82772 (awarding attorneys' fees in a claims made settlement based on the gross settlement amount): *Masters v. Wilhelmina Model Agency Inc.*, 473 F.3d 4223, 437 (2d Cir. 2007) ("An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available.").
23. Public policy further favors approving a common fund attorneys' fee award in wage and hour class actions. *See DeLeon*, 2015 WL 2255394 at *6; *Sukhnandan*, 2014 U.S. Dist. LEXIS, at *26-27; *Johnson v. Brennan*, No. 10 Civ. 4712 (CM), 2011 WL 4357376, at *13 (S.D.N.Y. Sept. 16, 2011) (collecting cases), "If not, wage and hour abuses would go without remedy because attorneys would be unwilling to take on the risk." *Sukhnandan*, 2014 U.S. Dist. LEXIS, at *26-27; *see also Sand v. Greenberg*, No. 08 Civ. 7840 (PAC), 2010 WL 69359, at *3 (S.D.N.Y. Jan. 7, 2010). "[T]he NYLL [is a] remedial statute[], the purposes of which [is] served [*15] by adequately compensating attorneys who protect wage and hour rights." *Matheson*, 2011 WL 6268216, at *7. "Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by 'private attorneys general,' attorneys who fill [that role] must be adequately compensated for their efforts. *See Reyes v. Altamarea Grp. LLC*, No. 10 Civ. 6451(RLE), 2011 WL 4599822, at *7 (S.D.N.Y. Aug. 16, 2011); *see also Sand*, 2010 WL 69359, at *3 (statutory attorneys' fees are meant to "encourage members of the bar to provide legal services to those whose wage claims might otherwise be too small to justify the retention of able, legal counsel").
24. "Common fund recoveries are contingent on a successful litigation outcome." *Guaman v. Anja-Bar NYC*, No. 12 Civ. 2987 (DF), 2013 WL 445896, at *7 (S.D.N.Y. Feb. 5, 2013). Such "contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation . . . and transfer a significant portion of the risk of loss to the attorneys taking a case. Access to the courts would be difficult to achieve without compensating attorneys for that risk," *deMunecas v. Bold Food LLC*, No. 09 Civ. 0440 (DAB), 2010 WL 2399345, at *8 (S.D.N.Y. Apr. 19, 2010) (internal quotation marks omitted). Many individual litigants, including the Class Members here, "cannot afford to retain counsel at fixed hourly rates . . . yet they are willing to pay a portion of any recovery they may receive in return [*16] for successful representation." *Id.*
25. Class Counsel has shown great dedication to protecting the rights of low income workers. Without their willingness to accept the financial risks associated with taking on cases on a contingency basis most workers would be unable to afford legal representation to pursue their wage and hour claims.
26. Applying the lodestar method as a "cross check," the Court finds that the fee Class Counsel seeks is reasonable, as Class Counsel's request for one-third of the Fund is approximately 2.00 times their current "lodestar" of \$43,562.50 and is Fair and reasonable. *See e.g., Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (granting attorneys' fees of approximately 7.6 times the lodestar stating that the class counsel should not be penalized "for achieving an early settlement"); *Flynn v. N.Y. Dolls Gentlemen's Club*, 2015 U.S. Dist. LEXIS 82772 (granting attorneys' fees with a multiplier of 4.5 in a claims made settlement); *Puglisi v. TD Bank, N.A.*, No. 13 Civ. 637 (GRB), 2015 WL 4608655 (E.D.N.Y. July 30, 2015) (awarding a multiplier of 4.86); *Ramirez v. Lovin' Oven Catering Suffolk, Inc.*, No. 11 Civ. 520 (JLC), 2012 WL 651640, at *4 (S.D.N.Y. Feb. 24, 2012) (granting attorneys' fees equal to 6.8 times lodestar); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184-86 (W.D.N.Y. 2011) (awarding a multiplier of 5.3); *In re RJR Nabisco, Inc. Sec. Litig.*, No. 88 Civ. 7905 (MBM), 1992 WL 210138, at 5-8 (S.D.N.Y. Aug. 24, 1992) (awarding a multiplier of 6); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded [*17] by courts[.]").
27. Regardless of the method used to determine reasonable attorneys' fees, a court should consider the following factors:
- [T]he risks of the litigation, whether counsel had the benefit of a prior judgment, standing at bar of counsel for the plaintiffs and defendants, the magnitude and complexity of the litigation, responsibility undertaken, the amount recovered, the knowledge the court has of the case's history and the work done by counsel prior to trial, and what it would be reasonable for counsel to charge a victorious plaintiff.
- Fiala*, 899 N.Y.S.2d at 610. All of these factors weigh in favor of approving the requested fee.
28. The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but

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also for time that they will be required to spend administering the settlement going forward also supports their fee request.

29. The Court also awards Class Counsel \$470.00 in reasonable litigation costs *Sukhnandan, 2014 WL 3778173, at *15* (citing *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n. 3 (S.D.N.Y. 2003)) ("Courts typically allow counsel to recover their reasonable out-of-pocket expenses.").

30. The attorneys' fees and the amount in reimbursement of litigation costs and expenses shall be paid from the settlement fund.

Settlement Procedure

31. The "Effective Date" [*18] of the settlement shall be thirty (30) days following this Order if no appeal is taken from the Order. If a party appeals this Order, the "Effective Date" of the settlement shall be the day the Court enters a final order and judgment after resolving any appeals.

32. Within fifteen (15) days of the Effective Date, the Claims Administrator will distribute the funds in the settlement account by making the following payments in the order below:

- (1) Paying Class Counsel one-third of the fund (\$87,509.67);

- (2) Reimbursing Class Counsel \$470.00 for litigation costs and expenses;

- (3) Paying the Claims Administrator's fee;

- (4) Paying Plaintiff Sheerice Milton a service award of \$8,000.00; and

- (5) Paying the remainder of the fund to Qualified Class Members in accordance with the allocation plan described in the Settlement Agreement.

33. The Court retains jurisdiction over this action for the purpose of enforcing the Settlement Agreement and overseeing the distribution of settlement funds. The parties shall abide by all terms of the Settlement Agreement, which are incorporated herein, and this Order.

34. Upon the Effective Date, this litigation shall be dismissed with prejudice and all members of the [*19] Class who have not excluded themselves from the settlement shall be permanently enjoined from pursuing and/or seeking to reopen claims that have been released pursuant to the settlement.

It is so ORDERED this 14th day of Dec., 2015.

/s/ Sylvia G. Ash

HON. SYLVIA G. ASH, JSC

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