

2015 WL 993038

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United States District Court,  
S.D. New York.

Roldan **MONZON**, on behalf of himself and all  
others similarly situated, Plaintiff,

v.

103W77 PARTNERS, LLC, Smokin' Jfraser Inc.,  
and John Fraser, Defendants.

Albino Galvez and Juan Hernandez, on behalf of  
themselves and all others similarly situated,  
Plaintiffs,

v.

103W77 Partners, LLC, Smokin' Jfraser Inc., and  
John Fraser, Defendants.

Nos. 13 Civ. 5951(AT), 14 Civ. 530(AT). | Signed  
March 5, 2015.

**FINAL JUDGMENT AND ORDER GRANTING  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

**ANALISA TORRES**, District Judge.

\*1 Having considered Plaintiffs' Motion for Final Approval of Class Action Settlement, the supporting memorandum of law and the Declaration of Brian S. Schaffer and exhibits thereto, the oral arguments presented at the March 5, 2015 Fairness Hearing; and the complete record in this matter, for the reasons set forth therein and stated on the record at the Fairness Hearing and for good cause shown,

**IT IS HEREBY ORDERED, ADJUDGED AND  
DECREED, THAT:**

1. This Order incorporates by reference the definitions in the parties' Settlement Agreement and Release (the "Settlement Agreement") dated September 5, 2014, and all capitalized terms used in this Final Judgment shall have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

2. This Court approves the settlement and all terms set forth in the Settlement Agreement and finds that the

settlement is, in all respects, fair, reasonable, adequate, and not a product of collusion. See *Fed.R.Civ.P. 23(e)*; *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y.2005) (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138–39 (2d Cir.2000)).

3. The Court certifies the *Fed.R.Civ.P. 23* Class (the "Class") for settlement purposes. For the purposes of settlement, the Court finds that the Class meets the requirements for class certification under *Fed.R.Civ.P. 23(b)(3)*.

4. The Court certifies Plaintiffs' counsel as Class Counsel, and the named Plaintiffs as Class Representatives.

5. Defendants shall fund the \$500,000.00 Settlement Fund in two (2) equal payments, each comprising one-half of the Total Settlement Fund (*i.e.* \$250,000.00). Defendants must remit the First Payment of the Settlement Fund to the Claims Administrator no later than June 1, 2015. Defendants must remit the Second Payment of the Settlement Fund to the Claims Administrator no later than June 1, 2016. If the Final Effective Date occurs after either or both of these dates, any affected payment(s) shall be delayed until ten (10) business days after the Final Effective Date.

6. The \$500,000.00 settlement amount is substantial and includes meaningful payments to Class Members. In reaching this conclusion, the Court is satisfied that the settlement was fairly and honestly negotiated at arm's-length by experienced and capable counsel after meaningful discovery and mediation with an experienced employment-law mediator, and further that serious questions of law and fact exist such that the value of an immediate recovery outweighs the mere possibility of further relief after protracted and expensive litigation. See *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir.2001).

7. The Parties' judgment that the settlement is fair, reasonable and adequate, as well as the Class's favorable response to the Settlement, with no Class Members objecting to or opting-out of the Settlement, weigh in favor of final approval of the Settlement.

8. The Settlement Agreement shall be effective thirty (30) days after entry of this Order if no appeal is taken of this Order. If an appeal is taken of this Order, the Final Effective Date shall be thirty (30) days after the latest of the following: (1) any appeal from the Final Order has been finally dismissed; (2) the Final Order has been affirmed on appeal in a form substantially identical to the

form of the Final Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final Order has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Order in a form substantially identical to the form of the Final Order entered by the Court.

\*2 9. The Court awards Class Counsel one-third of the total settlement amount, or \$166,666.67, as attorneys' fees to be paid from the Settlement Fund. *See Tiro v. Pub. House Investments, LLC*, No. 11 Civ. 7679(CM), 2013 WL 4830949, at \*4 (S.D.N.Y. Sept. 10, 2013). The trend in the Second Circuit is to use the percentage of the fund method in common fund cases like this one, as it directly aligns the interests of the class and its counsel, mimics the compensation system actually used by individual clients to compensate their attorneys, provides a powerful incentive for the efficient prosecution and early resolution of litigation, and preserves judicial resources. *See Sewell v. Bovis Lend Lease, Inc.*, No. 09 Civ. 6548(RLE), 2012 WL 1320124, at \*10 (S.D.N.Y. Apr. 16, 2012) (“[The percentage] method is similar to private practice where counsel operates on a contingency fee, negotiating a reasonable percentage of any fee ultimately awarded.”).

10. The Court awards Class Counsel \$4,656.13 to be paid from the Settlement Fund for their actual costs and expenses incurred in this Litigation, which were incidental and necessary to the representation of the Class.

11. The Court awards the Claims Administrator its reasonable costs in administering the Settlement, subject to Class Counsel's review of the Claims Administrator's invoices, to be paid out of the Settlement Fund.

12. The Court approves the six (6) Enhancement Awards described in the Settlement Agreement to be paid from the Settlement Fund. The Enhancement Awards are

reasonable in light of the efforts the Plaintiffs expended in furthering the interests of the Class. The Court acknowledges that plaintiffs play a crucial role, and that enhancement awards are particularly appropriate in the employment context where plaintiffs are often former or current employees of the defendants, and have, thus, for the benefit of the class as a whole, undertaken the risks of adverse actions by the employer or co-workers. *See, e.g., Tiro*, 2013 WL 4830949 at \*10.

13. The Court approves this Settlement and finds that it is a fair and reasonable resolution of a *bona fide* dispute under the Fair Labor Standards Act, reached as a result of contested litigation.

14. The Litigation is dismissed with prejudice and without costs to any party. All Class Members, except those individuals who timely and validly opted-out of the Settlement, are barred and permanently enjoined from participating in any other individual or class lawsuit or other proceeding or claim against the Releasees concerning the claims released in the Settlement Agreement.

15. Without affecting the finality of this Judgment and Order, the Court reserves continuing and exclusive jurisdiction over the interpretation and implementation of the Settlement Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of the Settlement Agreement and of the settlement contemplated thereby.

\*3 16. The Parties having so agreed, good cause appearing, and there being no just reason for delay, it is expressly directed that this Final Judgment and Order be, and hereby is, entered as a final order.

It is so ORDERED.