SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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EDISON LOPEZ, CARLOS CRUZ CACILDO, and JUSTIN WANDS, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

THE DINEX GROUP, LLC, 44TH STREET RESTAURANT, LLC, BOWERY RESTAURANT, LLC, 64 WEST RESTAURANT, LLC, 65TH STREET RESTAURANT, LLC, 76TH STREET RESTAURANT, LLC, and DANIEL BOULUD,

Defendants.

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Index No.: 155706/2014

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

[PROPOSED] FINAL JUDGMENT AND ORDER
GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs filed this Class Action Complaint in New York County Supreme Court on June 10, 2014 ("the Litigation") on behalf of themselves and all other situated servers, bussers, runners, bartenders, baristas, captains, assistant captains, hosts, sommeliers, and other "Tipped Workers" who work or have worked in New York at db Bistro Moderne, DBGB Kitchen and Bar, Bar Boulud, Daniel, Café Boulud, and Boulud Sud. The Complaint asserts claims under the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"), claiming that The Dinex Group, LLC; 44th Street Restaurant, LLC; Bowery Restaurant, LLC; 64 West Restaurant, LLC; 65th Street Restaurant, LLC; 76th Street Restaurant, LLC; and Daniel Boulud (collectively "Defendants"): 1) failed to satisfy the requirements under both statutes by which they could apply a tip credit to the Tipped Workers' hourly rates; 2) allocated a portion of the mandatory tip pools to polishers and expeditors; 3) misappropriated tips from Tipped Workers by retaining all

or a portion of mandatory administrative fees and/or service charges paid by customers hosting private events; 4) failed to pay Tipped Workers spread-of-hours pay until in or around 2011; and 5) failed to furnish Tipped Workers with proper wage notices and wage statements in accordance with the Wage Theft Prevention Act.

After prolonged settlement negotiations, the Parties executed a Class-wide Settlement Agreement and Release ("Settlement Agreement") on or around March 16, 2015. Plaintiffs filed a motion for Preliminary Approval of the Settlement Agreement on March 16, 2015. On June 23, 2015, the Court preliminarily approved the Settlement Agreement, appointed Fitapelli & Schaffer, LLP ("F&S") as Class Counsel, ordered that notices be sent to Class Members, and ultimately set October 6, 2015 as the date for a Fairness Hearing.[1]

On September 28, 2015, Plaintiffs 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 6, 2015. After the Notice Period, ~~324~~ 334 executed claims forms were timely returned, representing a participation rate of 32.8% of the total Class. No Class Member objected to the settlement, and only 14 Class Members 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 6, 2015 Fairness Hearing, and the complete

[1] The Court originally set the Fairness Hearing for September 1, 2015, but subsequently rescheduled it for October 6, 2015 at the request of counsel to follow the provided Class Notice period otherwise approved in the June 23, 2015 Order.

record in this matter, for the reasons set forth therein and stated on the record at the October 6, 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:

> Named Plaintiffs and the 988 current and former employees of Defendants who performed work as servers, bussers, runners, bartenders, baristas, captains, assistant captains, hosts, sommeliers, and in any other similarly situated tipped position who work or have worked for Defendants for more than 6 weeks in New York at db Bistro Moderne, DBGB Kitchen and Bar, Bar Boulud, Daniel, Café Boulud, or Boulud Sud at any time from June 10, 2008 through June 23, 2015.

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 Am. 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 Colt 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. 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 of 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 Defendants. 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 Plaintiffs' 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, Defendants have and will continue to vigorously contest Plaintiffs' 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 Plaintiffs and the Class Members in the face 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 cumulative service award of $50,000 for the class representatives Edison Lopez ($20,000), Carlos Cruz Cacildo ($20,000), and Justin Wands ($10,000) is reasonable given the significant contributions they 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 enhancement awards in class action suits and such awards are not uncommon. Such awards are warranted where there exist "special circumstances including the personal risk (if any) incurred by the plaintiff applicant in becoming and continuing as a litigant [and] the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or bringing to bear added value." *Frank*, 228 F.R.D. at 187. 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." *Id.*

9. The named Plaintiffs expended considerable time and effort assisting Class Counsel with the case, performed significant services to Class Counsel, and assumed significant risk in prosecuting this action. Plaintiffs' services included informing Class Counsel of the

detailed factual information regarding their employment with Defendants, providing relevant documents in their possession, participating in litigation strategy, assisting Class Counsel to prepare for settlement discussions, and reviewing and commenting on the ultimate settlement terms. In addition, Plaintiffs' contribution during the Class Notice period supports these service awards, as they were instrumental in facilitating the communications between Class Members and Class Counsel, provided Class Counsel with significant updated contact information for Class Members, checked in on the status of Class Members' claims forms, and even asked Class Counsel questions on behalf of Class Members who were afraid or embarrassed to ask themselves. As such, their actions exemplify the very reason courts award service fees. *See Frank*, 228 F.R.D. at 187 (recognizing the important role that plaintiffs play as the "primary source of information concerning the claim[,]" including by responding to counsel's questions and reviewing documents); *Parker v. Jekyll & Hyde Entm'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 Plaintiffs 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 v. Public House Investments, LLC*, No. 11 Civ 7679 (CM), 2013 WL 2254551, at *11 (S.D.N.Y. May 22, 2013); *Silberblatt 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."). Here, Plaintiffs faced a real risk of retaliation due to Defendants' well-

known reputation in the restaurant industry and the various newspaper articles discussing this lawsuit. In addition, the service awards of $20,000 to Edison Lopez and Carlos Cruz Cacildo are warranted due to their status as current employees. Even where there is not a record of actual retaliation, service fees are appropriate in 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 awards totaling $50,000 for Plaintiffs are reasonable and well within the range awarded by courts in similar matters. *See, e.g., Munir et al. v. Sunny's Limousine Service, Inc. at al.*, No: 13-cv-1581 (VSB), ECF 155, at *3 (S.D.N.Y. Jan. 8, 2015) (approving service award of $30,000 to one named plaintiff and five separate $10,000 awards to other five named plaintiffs); *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); *Matheson v. T-Bone Rest.*, No. 09 Civ. 4214 (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 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 Plaintiffs' request for the Claims Administrator to be paid out of the settlement fund.

The estimated administration costs are $25,419.00. 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 June 23, 2015, the Court appointed F&S as Class Counsel because they did substantial work identifying, investigating, litigating, and 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 and in class action law. *See* NYSCEF Doc No. 72.

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., Long et al. v. HSBC USA Inc. et al.*, No: 14 Civ. 6233 (HBP), ECF 29, at 25-26 (S.D.N.Y. Sept. 11, 2015); *Fernandez*, 2015 N.Y. Misc. LEXIS 2193, at *9-10; *Hamadou v. Hess Corp.*, No. 12 Civ. 0250 (JLC), 2015 WL 3824230, at *2 (S.D.N.Y. June 18, 2015); *Carpenter v. Paige Hospitality 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 et al.*, Nos. 13 Civ. 5951(AT), 2015 WL 993038, at *2 (S.D.N.Y. Mar. 5, 2015) (same); *Yuzary v. 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 et al. v. Royal Health Care of Long Island, LLC*, No. 12 Civ 4216 (RLE), 2014 U.S. Dist. LEXIS 105596, at *9-*10 (S.D.N.Y. July 31, 2014) ("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 (PAE), 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 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 et al. v. W&E Hospitality Inc. et al.*, No: 10 Civ 7351 (LLS), 2012 WL 2775019, at *2-3 (S.D.N.Y. July 6, 2012); *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 $466,666.67, 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 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.

20. As recently explained by the Southern District of New York, "[i]t is black letter law that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole . . . [and] . . . courts [are authorized] to employ a percentage-of-the-fund method when awarding fees in common fund cases." *Hart et al. v. RCI Hospitality Holdings, Inc., et al.*, No: 09 Civ. 3043 (PAE), 2015 WL 557713, at *13 (S.D.N.Y. Sept. 22, 2015) (citations omitted). 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 et al. v. Microsoft Corp.*, No 105193/2000, 26 Misc.3d 1220 (A), at *3 (Sup. Ct. N.Y. County Feb. 2. 2007); *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 F.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).

21. 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).

22. 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., Hart*, 2015 WL 5577713, at *17; *DeLeon*, 2015 WL 2255394, at *6 ("Class Counsel's request for one-third of the fund is reasonable and 'consistent with the norms of class litigation in this circuit.'") (citation omitted); *Puglisi v. TD Bank, N.A.*, No. 13 CIV. 637 (GRB), 2015 WL 4608655, at *1 (E.D.N.Y. July 30, 2015) (awarding Class Counsel $3,300,000.00 in attorneys' fees, which is one-third of the settlement fund); *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 (E.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 (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).

23. 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., Behzadi 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); *Alleyne v. Time Moving & Storage, Inc.*, 264 F.R.D. 41, 59 (E.D.N.Y. 2010) (approving one third of total common fund, stating that "the proper number against which attorneys' fees are measured is the amount of the entire fund created by the efforts of counsel, not the amount actually claimed or collected by the class"); *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.").

24. 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 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").

25. "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 for successful representation." *Id.*

26. 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. In addition, Class Counsel performed significant service to Class Members during the Notice Period by proactively seeking out Class Members' updated contact information, updating the Claims Administrator with new contact information, receiving and forwarding signed claims forms to the Claims Administrator, and using its own resources to facilitate the electronic signatures of Class Members to avoid untimely claims submissions.

27. 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 3.15 times their current "lodestar" of $148,552.50 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*, 2015 U.S. Dist. LEXIS 82772, at *3 (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, at *1 (E.D.N.Y. July 30, 2015) (awarding a multiplier of 4.86); *Yuzary*, 2013 WL 5492998, at *11 (granting attorneys' fees of approximately 7.6 times the lodestar stating that class counsel should not be penalized for "achieving an early settlement"); *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 by courts[.]").

28. 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.

29. The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but also for time that they will be required to spend administering the settlement going forward also supports their fee request.

30. The Court also awards Class Counsel $585.00 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.").

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

Settlement Procedure

32. The "Effective Date" 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

33. Within five (5) 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 ($466,666.67);

(2) Reimbursing Class Counsel $585.00 for litigation costs and expenses;

(3) Paying the Claims Administrator's fee;

(4) Paying service awards to the named Plaintiffs as follows: $20,000.00 to Edison Lopez, $20,000.00 to Carlos Cruz Cacildo, and $10,000.00 to Justin Wands;

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

34. 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.

35. Upon the Effective Date, this litigation shall be dismissed with prejudice and all members of the 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 6 day of OCTOBER, 2015.

OCT 0 6 2015

Hon. Eileen A. Rakower

HON. EILEEN A. RAKOWER