

<b>Varela v Building Serv. Indus.,LLC</b>
2018 NY Slip Op 33514(U)
June 21, 2018
Supreme Court, Nassau County
Docket Number: 600037/16
Judge: Jeffrey S. Brown
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**SHORT FORM ORDER**

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

**P R E S E N T : HON. JEFFREY S. BROWN  
JUSTICE**

-----X  
**JOSE VARELA and ELIDA GONZALES,**

**Plaintiff(s),**

**-against-**

**BUILDING SERVICE INDUSTRIES, LLC, "BSI,"  
CFM SERVICE CORPORATION "CFM," NINETY FIVE  
SOUTH INC., JOSEPH KLEINPETER, JUAN  
RODRIGUEZ,**

**Defendant(s).**

-----X

**TRIAL/IAS PART 12**

**INDEX # 600037/16**

**Decision Following  
Fairness Hearing**

**XXX**

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The following papers were read on this motion:	Papers Numbered
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On December 29, 2017, the court granted plaintiff's application for preliminary approval of a class action settlement in this wage and hour action. Presently before the court is plaintiff's unopposed motion for final approval of the class action settlement, including approval of attorneys' fees, named plaintiffs' shares, and settlement claims administrator's costs and expenses. A fairness hearing was conducted on May 22, 2018, at which time the court approved the terms of the settlement but reserved decision on counsel fees pending further submissions by counsel for the class. The court has reviewed the submissions in support of final approval, including the affirmation of Michael Tompkins, Esq., the declaration of the settlement claims administrator, and the supplemental affirmation of Michael Tompkins, Esq., explaining the fees of Leeds Brown Law, P.C.

The gross class settlement amount is \$1,000,000.00. Class counsel Leeds Brown Law, P.C. seeks approval of \$306,761.00 in attorneys' fees, \$3,884.00 in costs, \$22,355.00 for claims administration, \$45,500.00 to each of the named plaintiffs, and \$25,000.00 as a reserve fund. Class counsel's proposed fee represents 30.68% of the gross settlement amount or the lodestar amount adjusted by a multiplier of 2.321.

"The Court may approve the settlement of a class action only if the proposed settlement is fair, adequate, reasonable and in the best interest of class members (*Klein v. Robert's American Gourmet Food, Inc.*, 28 A.D.3d 63, 73 [2d Dept 2006] ). The factors to be considered in resolving this question include: the likelihood that plaintiffs will succeed on the merits; the judgment of counsel; the presence of good faith bargaining; and complexity and nature of the issues of fact and law." (*Conolly v. Universal Am. Fin. Corp.*, 21 Misc. 3d 1109(A) [Sup. Ct. Westchester County 2008]).

With respect to attorneys' fees,

"Under the general rule in New York, attorneys' fees are deemed incidental to litigation and may not be recovered unless supported by statute, court rule or written agreement of the parties (*Hooper Assoc. v. AGS Computers*, 74 N.Y.2d 487, 491 [1989]). An attorney is not entitled to legal fees from persons other than his or her client merely because such other persons were benefitted by his or her services (*Matter of Loomis*, 273 N.Y. 76 [1937] ). There are certain exceptions to the general rule, including an award of counsel fees for class actions brought on behalf of all members of a class.

"Such an award is embodied in CPLR 909, which provides:

'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 based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class' (emphasis added)."

(*Fleming v Barnwell Nursing Home and Health Facility*, 15 NY3d 375 [2010]).

"The amount awarded in attorney's fees must be based on the 'reasonable value of legal services rendered' (CPLR 909). The burden of showing the reasonableness of the fee lies with the claimant (*see Matter of Karp [Cooper]*, 145 A.D.2d 208, 216), and '[t]he determination of what constitutes a reasonable fee involves extensive consideration of the nature and value of the services rendered by the plaintiffs' attorneys' (*Friar v. Vanguard Holding Corp.*, 125 A.D.2d 444, 447 [1986]). Although the claimant is not required to tender contemporaneously-maintained time records, 'the court will usually, and especially in a matter involving a large fee, be presented with an objective and detailed breakdown by

the attorney of the time and labor expended, together with other factors he or she feels supports the fee requested' (*Matter of Karp [Cooper]*, *supra* at 216). Otherwise stated, '[t]he valuation process requires definite information, not only as to the way in which the time was spent (discovery, oral argument, negotiation, etc.), but also as to the experience and standing of the various lawyers performing each task (senior partner, junior partner, associate, etc.)' (*Washington Fed. Sav. & Loan Assoc. v. Village Mall Townhouses, Inc.*, 90 Misc.2d 227, 230–231 [Sup. Ct. Queens County, Kassoff, J., 1977]; *see also Sheridan v. Police Pension Fund*, Art. 2 of City of N.Y., 76 AD2d 800 [1980])."

(*Klein*, 28 AD3d 63).

The two accepted methods to determine attorneys' fees are the percentage approach and the lodestar method, whereby the court determines the reasonable hourly rate and multiplies it by the reasonable number of hours expended, then adjusts the fee based upon certain subjective criteria. (*Flemming v. Barnwell Nursing Home and Health Facilities, Inc.*, 56 A.D.3d 162 [3d Dept 2008]). An award of one third of the common fund created by the class litigation is within the range of reasonableness previously approved in similar cases when considered in light of the risks undertaken with contingency fee cases and the work performed on behalf of the class. (*See id.*; *see also Hart v. RCI Hospitality Holdings, Inc.*, 2015 WL 557713 [S.D.N.Y. Sept. 22, 2015]; *DeLeon v. Wells Fargo Bank, N.A.*, 2015 WL 2255394 [S.D.N.Y. May 11, 2015]).

In reviewing the billing records submitted, the court finds that class counsel have established their significant experience prosecuting employment class actions and their work performed in representing the interests of the class members in this action. Accordingly, the court will approve the requested attorneys' fees, costs and expenses.

The court finds the remaining terms of the settlement to be fair, adequate, and reasonable.

For the foregoing reasons, it is hereby:

ORDERED, that the plaintiff's motion is **granted**; and it is further

ORDERED, that the court grants final approval of the \$1,000,000.00 settlement memorialized in the Settlement Agreement, attached to the Affirmation of Michael Tompkins, Esq. as Exhibit C; and it is further

ORDERED, that the payment of \$45,500.00 to each named plaintiff from the class settlement fund is approved; and it is further

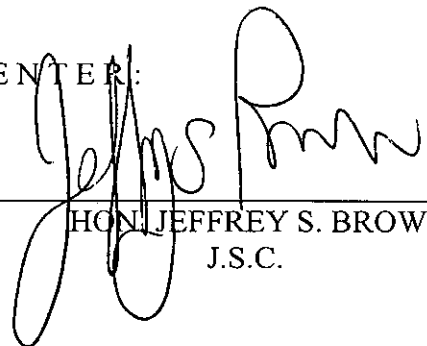
ORDERED, that a reserve fund in the amount of \$25,000.000 is approved; and it is further

ORDERED, that the attorneys' fees in the amount of \$306,761.00, plus costs and expenses expended on the litigation and administration of the settlement, to class counsel to be paid from the class settlement fund is approved; and it is further

ORDERED, that if no individual or party appeals this order, the "Effective Date" of the settlement will be thirty (30) days after the entry of this order.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York  
June 21, 2018

ENTER:  
  
HON. JEFFREY S. BROWN  
J.S.C.

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**ENTERED**  
JUN 25 2018  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE