

Antezana v Fiftyone Merchants LLC

2023 NY Slip Op 32639(U)

July 26, 2023

Supreme Court, Kings County

Docket Number: Index No. 536229/2022

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS **PART 83**

RICARDO ANTEZANA, GEOVANNI RENDON, ABIBOU
FAYE, EMMANUEL MORALES, AND JOEL ROSAS,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

INDEX NUMBER:
536229/2022

PLAINTIFFS,

-AGAINST-

FIFTYONE MERCHANTS LLC D/B/A VIA CAROTA,

DEFENDANT,

**ORDER GRANTING (1) PLAINTIFFS' UNOPPOSED MOTION FOR
CERTIFICATION OF THE SETTLEMENT CLASS, FINAL APPROVAL OF THE
CLASS ACTION SETTLEMENT, AND APPROVAL OF THE FLSA SETTLEMENT; (2)
PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF CLASS
REPRESENTATIVE SERVICE AWARDS; (3) PLAINTIFFS' UNOPPOSED MOTION
FOR APPROVAL OF MEDIATOR'S FEES, CLAIMS ADMINISTRATOR'S FEES,
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

The Parties entered into a settlement totaling \$750,000 on or about November 28, 2022 in a Class and Collective Action Settlement Agreement and Release (hereinafter "Settlement" or "Settlement Agreement") and filed for preliminary approval of the settlement on December 13, 2022.

On December 13, 2022, Plaintiffs filed a Motion for Final Approval of Class and Collective Action Settlement, Claims Administrator's Fees, Service Awards, and Attorney's Fees and Expenses ("Motion for Final Approval"). The motion was unopposed, and Defendant took no position with respect to the requests for attorneys' fees, costs or service payments.

On April 12, 2023, this Court entered an Order preliminarily approving the settlement on behalf of the class set forth therein (the “Class” or the “Class Members”), conditionally certifying the settlement class, appointing The Law Office of Jeffrey E. Goldman as Class Counsel, appointing Ricardo Antezana, Geovanni Rendon, Abibou Faye, Emmanuel Morales and Joel Rosas, as class representatives, authorizing the parties to retain Martom Solutions, LLC as Settlement Administrator, and authorizing notice to all Class Members (the “Preliminary Approval Order”). (NYSCEF, Doc. No. 15.)

The Court held a fairness hearing on July 25, 2023. No Class Member objected to the settlement at or prior to the hearing.

Having considered the Motion for Final Approval, the supporting declarations and exhibits, the oral argument presented at the July 25, 2023 fairness hearing, and the complete record in this matter, for the reasons set forth therein and stated on the record at the July 25, 2023 fairness hearing, and for good cause shown,

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

1. Except as otherwise specified herein, the Court for purposes of this Order adopts all defined terms as set forth in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of this litigation and all matters relating thereto, and over all Parties.
3. Pursuant to NY CPLR § 901, et. seq. the Court confirms as final its certification of the Class for settlement purposes based on its findings in the Preliminary Approval Order and in the absence of any objections from Class Members to such certification, the following Class: all persons who work or have worked as a server, backwaiter, busser, runners, bartender, and barback, at any time since July 1, 2015 through July 15, 2022.

4. Pursuant to 29 § U.S.C. 216(b), the Court approves the FLSA Settlement.

5. The Court confirms as final the appointment of Plaintiffs Ricardo Antezana, Geovanni Rendon, Abibou Faye, Emmanuel Morales and Joel Rosas as representatives of the Class, under CPLR § 901, et. seq.

6. The Court likewise confirms as final the appointment of The Law Office of Jeffrey E. Goldman as Class Counsel for the Class pursuant to CPLR § 901, et. seq.

7. The Court finds that the Class Notice given to Class Members pursuant to the Preliminary Approval Order constituted the best notice practicable under the circumstances, was accomplished in all material respects, and fully met the requirements of CPLR § 901, et. seq. and the Fair Labor Standards Act ("FLSA"), and due process.

8. Pursuant to CPLR § 908, this Court hereby grants the Motion for Final Approval to the Agreement and finally approves the settlement as set forth therein. The Court finds that the settlement is fair, reasonable and adequate in all respects and that it is binding on Class Members and FLSA Members who opted in pursuant to the procedures set forth in the Preliminary Approval Order. The Court specifically finds that the settlement is rationally related to the strength of Plaintiffs' claims given the risk, expense, complexity, and duration of further litigation.

9. The Court finds that the proposed settlement is fair, adequate, and reasonable because it was reached through vigorous, arm's-length negotiations and after experienced counsel had evaluated the merits of Plaintiffs' claims through factual and legal investigation. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005).

10. 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., Inc.*, 27 Misc 3d 599, 606, 899 N.Y.S.2d 531 (Sup Ct 2010) (internal citations omitted). "Adequacy requires balancing the value of that settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Id.* at 607 (internal citations and quotations omitted).

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 AD2d 154, 160, 553 N.Y.S.2d 138 (1st Dept. 1990), *affd as mod sub nom. Matter of Colt Indus. Shareholder Litig. v Colt Indus. Inc.*, 77 NY2d 185, 566 N.E.2d 1160, 565 N.Y.S.2d 755 (1991)

11. The Court also finds that the class's reaction to the settlement was positive. No Class Member opted out of the settlement and no Class Member objected to the settlement.

12. The Court finds that the proposed plan of allocation is rationally related to the relative strengths and weaknesses of the respective claims asserted. The mechanisms and procedures set forth in the Settlement Agreement by which payments are to be calculated and made to Class Members are fair, reasonable and adequate, and payment shall be made according to those allocations and pursuant to the procedures as set forth in the Agreement. As set forth in the Settlement Agreement, the amount necessary to fund all payments to be made from the Settlement Fund is to be issued by Defendant to the Claims Administrator within twenty-one (21) days from the Effective Date of the Settlement. The Effective Date of the Settlement shall be the last of the following dates: (a) the date thirty-five (35) days after the entry of an order by the Court granting final approval to the Agreement, if there are no appeals; or (b) if there is an

appeal of the Court's decision or order granting final approval, the day after all appeals are finally resolved in favor of final approval. Within five (5) business days after receiving such funds from Defendant, the Claims Administrator shall distribute the following payments: (a) paying Class Counsel's Court-approved attorneys' fees and costs; (b) paying the Court-approved Service Payments to the Named Plaintiffs (c) paying the Claims Administrator's Court-approved fees and costs; and (4) paying Participating Claimants their portion of the Net Settlement Fund.

13. The Court hereby grants Plaintiffs' Motion for Attorneys' Fees and awards Class Counsel \$250,000 which is one-third of the Settlement Fund, which the Court finds to be fair and reasonable based on: (A) the number of hours worked by Class Counsel during this litigation; (B) the results achieved on behalf of the Class; (C) the contingent nature of Class Counsel's representation; (D) the complexity of the issues raised by this litigation; (E) a lodestar cross check; and (F) Class Counsel's recognized experience and expertise in the market. The Court finds Class Counsel's hourly rates to be reasonable. The attorneys' fees shall be paid from the Settlement Fund.

14. The Court also awards Class Counsel reimbursement of their litigation expenses in the amount of \$5,622, which expenses the Court finds were necessarily and reasonably incurred by Class Counsel in prosecuting this litigation. The attorneys' fees and the amount in reimbursement of litigation costs and expenses shall be paid from the Settlement Fund.

15. The Court approves and finds reasonable the service awards for Named Plaintiffs each in the amount of \$10,000 (totaling \$50,000), in recognition of the services they rendered on behalf of the class. These service awards shall be paid from the Settlement Fund.

16. The Court approves and finds reasonable the payment of the Settlement Administrator's fees in the amount of \$8,700, which shall be paid from the Settlement Fund.

17. The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Defendant in no way admits any violation of law or any liability whatsoever to Plaintiffs and the Class, individually or collectively, all such liability being expressly denied by Defendant.

18. The Court hereby enters this Final Order and Final Judgment and Dismissal with prejudice. The Court fully and finally dismisses this matter and this litigation in its entirety and with prejudice. No party to this litigation is or shall be considered a prevailing party.

19. All Class Members and claimants are enjoined pursuant to 28 U.S.C. § 1651(a) from initiating or proceeding against Defendant and any of the Releasees as defined in the agreement with any and all suits, actions causes of action, claims, or demands in federal or state court or administrative agency based on putative violations of any state law (including the New York Labor Law and statutory, regulatory, and common law) pertaining to wage and hour claims, including any and all claims that have been asserted or could have been asserted in this action.

20. All Opt-In Plaintiffs, Class Members and claimants who sign their respective settlement check(s), are enjoined pursuant to 28 U.S.C. § 1651(a) from initiating or proceeding against Defendant and any of the Releasees as defined in the agreement with any and all suits, actions causes of action, claims, or demands in federal or state court or administrative agency based on putative violations of the FLSA, including any and all claims that have been asserted or could have been asserted in this action.

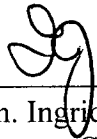
21. The entry of this Order hereby fully and completely releases and discharges Defendant, its respective affiliates, subsidiaries, parents, and other related entities, and all of their incumbent and former officers, directors, members, owners, franchisees, licensees, shareholders,

investors, agents, attorneys, employees, insurers, fiduciaries, successors, assigns and representatives, in their individual and/or representative capacities, including but not limited to Rita Sodi and Jody Williams and any of their affiliates as defined in SEC Rule 12b-2 (“Releasees”) by Class Members and Claimants and on behalf of their respective current, former, and future heirs, spouses, executors, administrators, agents, and attorneys, from all Released Class Claims, which are defined as any and all claims based on or arising under the Fair Labor Standards Act, New York Labor Law, the Hospitality Industry Wage Order, and/or common law, whether known or unknown, for wages, gratuities, service charges, administrative charges, tips, interest on such claims, penalties, damages, liquidated damages, attorney’s fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief, based on events that took place from the beginning of time through the Final Effective Date.

22. Claimants release Defendant and Releasees from any and all claims based on or arising under the Fair Labor Standards Act or New York State law, including without limitation the New York Labor Law, the Hospitality Industry Wage Order, and/or common law, whether known or unknown, for wages, gratuities, service charges, administrative charges, tips, interest on such claims, penalties, damages, liquidated damages, attorney’s fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief, based on events that took place from the beginning of time through the Final Effective Date.

23. 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.

It is so ORDERED this 26th day of July, 2023.



Hon. Ingrid Joseph
Supreme Court of Kings County

**Hon. Ingrid Joseph
Supreme Court Justice**