

Bernardez v Alternate Staffing, Inc.

2024 NY Slip Op 30736(U)

March 8, 2024

Supreme Court, New York County

Docket Number: Index No. 150826/2017

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL A. GOETZ **PART** **47**

Justice

-----X

LESLEY MEJIA BERNARDEZ, DAYSI CASTILLO, JORGE GONZALEZ, OTHER PERSONS SIMILARLY SITUATED

Plaintiffs,

- v -

ALTERNATE STAFFING, INC.,

Defendant.

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INDEX NO. 150826/2017

MOTION DATE 12/04/2023

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 213, 214, 215, 216, 217, 218, 219, 220

were read on this motion to/for MISCELLANEOUS.

In this class action, brought on behalf of home health aides and personal care assistants who were employed by defendant, commenced to recover, *inter alia*, unpaid wages and benefits, plaintiffs move unopposed for final approval of the parties’ settlement agreement. After engaging in extensive discovery and numerous settlement negotiations, the parties executed a settlement and release agreement, filed on May 18, 2023 (NYSCEF Doc No 194), to resolve the case for \$2,949,056.64. By decision and order dated June 30, 2023, the court preliminarily approved the settlement and the proposed notice of settlement and claim form (NYSCEF Doc Nos 199, 201). Pursuant to the June 30, 2023 order, plaintiffs’ counsel caused to be distributed by a claims administrator packets containing the notice of settlement and claim form to all class members. No class members opted out of or objected to the settlement. Plaintiffs now seek final approval of the proposed settlement agreement.

Pursuant to CPLR § 908, court approval is required for any compromise of a class action. A 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 (*Gordon v Verizon Comms.*, 148 AD3d 146, 156 [1st Dept 2017]). This review must consider the following factors: 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 (*id.*, citing *In re Cold Indus Shareholder Litig. v Cold Indus.*, 155 AD2d 154, 160 [1st Dept 1990]). Approval is appropriate when “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval” (*In re Initial Pub. Offerings Sec. Litig.*, 226 FRD 186, 191 [SDNY 2005]).

Here, the parties, through experienced and competent counsel, engaged in extensive discovery and arms-length negotiations for more than six years before arriving at this proposed settlement. The final settlement fund will provide the significant benefit of immediate payment to impacted class members. Further, continued litigation in this matter poses significant risks to the class in establishing both liability and damages, and resolution would depend on the determination of complex factual and legal issues. Finally, all parties fully support the settlement and plaintiffs’ counsel recommends approval based upon their experience and detailed knowledge of the strengths and weaknesses of the case.

Awards, Fees, and Costs

Counsel for the class seeks an award of \$825,735.86 in legal fees and costs, which constitutes 28% of the gross settlement fund. Pursuant to CPLR § 909, fees are awarded “based on the reasonable value of legal services rendered.” The fees sought are reasonable in light of the ultimate benefit to the class, the complexity of the facts and law, the amount of time spent litigating and settling this action, and that the case was taken on a contingency fee basis (*In re*

Veeco Instruments Secs. Litig., 2007 U.S. Dist. LEXIS 85554, *12 [SDNY 2007] [awarding \$1.65 million in attorneys' fees, representing 30% of the total class fund of \$5.5 million]; *Sheridan v Police Pension Fund, Art. 2*, 76 AD2d 800 [1st Dept 1980] [factors to consider include risks of litigation, standing of counsel, complexity of the case, and amount recovered]).

The service award of \$12,000 to each named plaintiff is reasonable, given the risk they undertook in bringing this action on behalf of the class, as well as the significant amount of time invested over the years to participate in meetings, respond to discovery demands, and guide negotiations (*Hernandez v Merrill Lynch & Co., Inc.*, 2013 U.S. Dist. LEXIS 42681 [SDNY 2013] [approving service awards of \$15,000 and \$12,500 to class representatives in wage and hour action]; *Silva v Little Fish Corp.*, 2012 U.S. Dist. LEXIS 89485, *8 [SDNY 2012] [approving \$15,000 service fee based on plaintiff's efforts on behalf of the class]).

Finally, the anticipated claims administrator fee of \$22,800 is reasonable in light of the logistical support that has been and will continue to be undertaken, including distributing the notice and claim form to class members, tracking all responses, determining each claimant's share of the settlement fund, calculating and paying each class member's taxes and preparing tax forms for all parties, and finalizing all matters related to settlement (*Mills v Capital One*, 2015 U.S. Dist. LEXIS 133530, *48 [SDNY 2015] ["No class member objected to the fee [] sought by the claims administrator of \$23,000 [which] is reasonable and is approved"]; *Henry v Little Mint, Inc.*, 2014 U.S. Dist. LEXIS 72574, *4 [SDNY 2014] [approving administrator fee of \$34,000 for class of 1,533 members]; *Sali v Zwanger & Pesiri Radiology Group, LLP*, 2022 U.S. Dist. LEXIS 48699, *39 [EDNY 2022] ["the Court notes from experience that the cost of sending notice and administering the claims could well exceed \$20,000"]).

Accordingly, it is

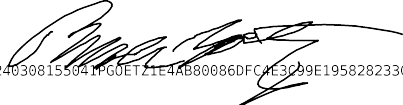
ORDERED that the motion for final approval of the settlement is granted based on the determination that the settlement as set forth in the settlement agreement is fair and reasonable; and it is further

ORDERED that the class members and named plaintiffs release all claims against defendant relating to the class action as set forth in the settlement agreement; and it is further

ORDERED that class counsel’s attorneys’ fees and costs in the amount of \$825,735.86 is approved and awarded to class counsel, service fees of \$12,000 for each named plaintiff is approved and awarded to each named plaintiff, and the claims administration fee in the amount of \$22,800 is approved and awarded to the claims administrator; and it is further

ORDERED that the court retains jurisdiction over this action for the purposes of enforcing the settlement agreement, and the parties shall abide by all the terms of the settlement agreement which are incorporated herein; and it is further

ORDERED that the case is dismissed with prejudice according to the terms of the settlement agreement and the Clerk shall enter judgment accordingly.


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3/8/2024
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: