SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ROBERT D. KALISH** **PART** **IAS MOTION 29EFM**

Justice

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STEVEN REEVES, and KRISTEN BOOTH,

Plaintiffs,

- v -

LA PECORA BIANCA, INC., LA PECORA BIANCA HOLDINGS, LLC, LPB1 LLC, and MARK BARAK

Defendants.

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INDEX NO. 151153/2018

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101

were read on this motion to/for MISCELLANEOUS.

Motion by plaintiffs Steven Reeves and Kristen Booth (collectively the "Named Plaintiffs"), on behalf of themselves and the proposed Class ("Class" or collectively "Plaintiffs") as defined in the Settlement Agreement (NYSCEF Doc No 58 [Settlement Agreement] at 3), for Final Approval of Class Action Settlement—including the approval of the Individual Settlement Amounts to Qualified Class Members, the approval of Fee & Cost Payments to Plaintiffs' Counsel ("Class Counsel" or "Plaintiffs' Counsel"), the approval of the Service Awards to Named Plaintiffs, and the approval of the Settlement Administrator Fee to Rust Consulting, Inc.—is granted, without opposition.

JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

On February 6, 2018, Plaintiffs filed a Class Action Complaint against defendants La Pecora Bianca, Inc., La Pecora Bianca Holdings, LLC, LPB1 LLC, and Mark Barak (collectively "Defendants") alleging that Defendants violated the New York Labor Law, NY Lab Law § 190, *et seq.* ("NYLL") by mismanaging the tip pool[1] and failing to provide notices of pay rate and wage statements.[2] (NYSCEF Doc No 2 [Class Action Complaint] ¶¶ 1-9; 45-71.) The Complaint

[1] The Complaint alleges that Defendants are permitted under the NYLL "to pay [tipped employees] at an hourly rate that is less than the statutory minimum wage rate . . . so long as the tips and gratuities that the [tipped employees] receive, when added to their hourly wages, meet or exceed the standard hourly minimum wage." However, according to the Complaint, Defendants have failed to meet the requirements under the NYLL to lawfully apply this "tip credit." (Class Action Complaint ¶¶ 45-67.)

[2] The Complaint also alleges that the NYLL requires Defendants to provide all employees with notices of pay rate and wage statements at the time of their hiring, which, according to the Complaint, Defendants have failed to do. (*Id.* ¶¶ 68-71.)

alleges four causes of action. Namely, (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to furnish notices of pay rate, and (4) failure to furnish accurate wage statements. (*Id.* ¶¶ 173-207.)

On March 13, 2018, Defendants filed a Motion to Dismiss and/or Strike Plaintiffs' Class Action Claims. (NYSCEF Doc No 14 [Defendants' Motion to Dismiss].)

On May 6, 2019, after having participated in mediation before Ruth D. Raisfeld, Esq., Plaintiffs and Defendants [collectively "parties"] entered into a Settlement Agreement, which provided for a Gross Settlement Fund of $462,500 (the "Settlement Fund"). (NYSCEF Doc No 58 [Settlement Agreement] at 1, 4.) As indicated in the Settlement Agreement, Defendants, without admitting or conceding any liability, have agreed to settle the instant matter. (*Id.* at 2.)

On June 27, 2019, Plaintiffs filed an unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Approval of Proposed Notice of Settlement. (NYSCEF Doc No 37 [Motion for Preliminary Approval].)

On November 20, 2019, the Court granted Preliminary Approval of the Settlement Agreement, certified the Settlement Class, appointed Plaintiffs as Class Representatives, appointed Plaintiffs' Counsel Faruqi and Faruqi as Class Counsel, scheduled a date for a Fairness Hearing, and authorized distribution of the Notice of Settlement ("Notice") and Claim Form (together "Notice Packet"). (NYSCEF Doc No 48 [Preliminary Approval Order and Decision].)

According to Plaintiffs' Counsel, on December 13, 2019, the Court-approved Notice Packets were distributed to 871 Class Members by First Class Mail; 346 were returned as undeliverable. A skip trace revealed 220 new addresses for these 346 Class Members and new Notice Packets were promptly re-mailed to them. Of these, 17 Notice Packets were returned as undelivered a second time. The 143 Class Members whose Notice Packets remained undelivered via mail were reported to Plaintiffs' Counsel. Additionally, on January 6, 2020, upon agreement of the parties, and direction of the court, Plaintiffs' Counsel emailed the Notice Packets to the Class Members. Thereafter, as per the moving papers,104 of the 143 previously un-noticed Class Members received the Notice Packet by email. A supplementary skip trace identified updated email addresses for 20 of the remaining 39 Class Members; Notice Packets were re-sent to them. Overall, despite best efforts, Notice Packets were unable to be sent to 19 of the 871 Class Members; amounting to 2% of the Class and 0.5% of the total Settlement. Further, on February 7, 2020, reminder postcards were mailed to Class Members who had not yet submitted Claim Forms reminding them of the March 13, 2020 deadline. Ultimately, two Class Members submitted Claim Forms after the deadline but, upon agreement of the parties, were still included as Authorized Claimants in the Settlement. In total, 500 Class Members submitted Claim Forms opting into the Settlement and becoming Authorized Claimants. These Authorized Claimants are set to receive 86.18% of the total available recovery for all Class Members. Four Class Members submitted Claim Forms opting out of the Settlement, while zero Class Members objected to the Settlement or disputed their award as provided in their Notice Packets. (Memo in Supp at 3, NYSCEF Doc No 56.)

Subsequently, on May 4, 2020, Plaintiffs filed an unopposed Motion for Final Approval of Class Action Settlement. (NYSCEF Doc No 55 [Motion for Final Approval of Class Action Settlement].) On the same date, Defendants submitted a Statement of Non-Opposition to Plaintiffs' Motion for Final Approval of the Class Action Settlement. (NYSCEF Doc No 101 [Statement of Non-Opposition].)

The Fairness Hearing that had originally been scheduled for April 7, 2020 was cancelled due to the COVID-19 pandemic. However, no one responded by requesting to appear at the hearing by the due date of March 13, 2020.

Due to the cancellation of the Fairness Hearing, the Court directed an additional notice be sent to the Class Members regarding a possible new virtual Fairness Hearing.

On or around May 22, 2020, Plaintiffs mailed out a notice to class members informing them that the Court will evaluate the Settlement Agreement based on written submission by the parties, and any Class Member could appear at the Fairness Hearing if they submitted their reason for appearing by June 10, 2020 by email. The notice provided that the Court would evaluate the response by the class member and would consider whether it was necessary for them to appear. (NYSCEF Doc No 103 [Supplemental Notice Regarding the Modification of the Settlement Fairness Hearing].) No Class Member again has requested a hearing in opposition to the Settlement. (NYSCEF Doc No 107 [Letter to Court].) Under the circumstances, the Court deems the right to appear and be heard at the Fairness Hearing to be satisfied and waived.

Having considered the Plaintiffs' Motion for Final Approval of Class Action Settlement and the record in this matter, for the reasons set forth in the written submissions by the parties, and for good cause shown,

Accordingly, it is hereby

ORDERED that

A. Certification of The Class

1. Pursuant to CPLR 901 and 902, the Court certifies, for settlement purposes, a Class consisting of all individuals who have been employed by Defendants in any position at any time from August 1, 2015, to January 23, 2019.

B. Approval of the Settlement Agreement

2. The Court grants the Motion for Final Approval of Class Action Settlement and approves the Settlement Fund, as set forth in the Settlement Agreement, of $462,500. The Court approves the Settlement Agreement except for the order of the installments for Defendants' settlement payments as described under the subheading "Timing of Defendants' Settlement Payments" on page fourteen of the Settlement Agreement and except for the definition of the Effective Date. (*See* NYSCEF Doc No 58 [Settlement

Agreement].) The timing of Defendants' Settlement Payments and the definition of the Effective Date shall be as set forth later in this decision.

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., Inc.*, 27 Misc 3d 599, 606 [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 [1st Dept 1990], *affd as mod sub nom. Matter of Colt Indus. Shareholder Litig. v Colt Indus. Inc.*, 77 NY2d 185 [1991] [internal citations omitted].)

4. The Court finds that all of these factors weigh in favor of approving the Settlement. The Settlement provides for a substantial and complete recovery of 100% of all economic damages for Class Members and is favorable to the best-case scenario that they could have hoped to obtain through prolonged litigation and, therefore, is fair, adequate, reasonable, and in the best interests of the Class Members. (Memo in Supp at 6 [internal citations omitted]; *see also Hosue v Calypso St. Barth, Inc*., 2017 WL 4011213, at *5 [Sup. Ct. Sept. 12, 2017] [approved settlement of 52% of economic damages]; *Cohetero v Stone & Tile, Inc*., 2018 WL 565717, at *7 [EDNY Jan. 25, 2018] [settlement for "approximately two-thirds of [] claimed, actual unpaid wages, which is not unreasonable in light of the risks of litigation."]; *Raniere v Citigroup Inc*., 310 FRD 211, 219 [SDNY 2015] ["[A] recovery figure of 22.8% seems within the bounds of reasonableness."].) Further, as set forth in the moving papers, in reaching the Settlement Agreement, Class Counsel took into account the risks of establishing liability, and also considered the time, delay, and financial repercussions in the event of a trial and appeal by Defendants. (*See Hosue*, 2017 WL 4011213, at *5.) Defendants had denied liability and moved to dismiss Plaintiffs' claims. Class Counsel factored in the risk that the burden on the part of Plaintiffs here would be significant given the significant disputes as to whether Defendants lawfully applied a tip credit or provided the required wage notices. (Memo in Supp at 7.) Moreover, the Settlement was reached as a result of extensive, arm's-length negotiations between experienced counsel who routinely practice wage-and-hour class action litigation. The parties exchanged discovery and damages calculations, and negotiated before, throughout, and after an all-day mediation to arrive at a resolution. (*See Wal-Mart Stores, Inc. v Visa U.S.A., Inc.*, 396 F3d 96, 116 [2d Cir 2005] ["A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery."]; *Vasquez v TGD Grp., Inc*., 2016 WL 3181150, at *3 [SDNY June 3, 2016].) Lastly, based on the papers submitted in the record, not a single Class Member objected to the Settlement or disputed their award information. (*Maley v Del Global Techs. Corp*., 186 F Supp 2d 358, 362- 63 [SDNY 2002] ["[T]he reaction of

the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy."].)

i. Service Awards

5. The Court has appointed Plaintiffs Steven Reeves and Kristen Booth to represent the Class and finds that, based upon their affidavits and counsel's affirmation, they have expended considerable time and effort, and have provided substantial assistance to Class Counsel, and in advancing the prosecution and resolution of this lawsuit on behalf of the Class.

6. The Court finds based upon the facts that a service award of $10,000 for each Named Plaintiff to be reasonable given the significant contributions each has made to advance the resolution of the lawsuit.

7. Service awards have been used by state courts to compensate "the named plaintiffs for the effort and inconvenience of consulting with counsel over the many years [a] case was active and for participating in discovery[.]" (*Cox v Microsoft Corp.*, 26 Misc 3d 1220(A), *4 [Sup Ct 2007].) Service awards have been found to be "particularly appropriate in the employment context[]" where "the plaintiff is often a former or current employee of the defendant, and thus, by lending his [or her] name to the litigation, he [or she] has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers." (*Frank v Eastman Kodak Co*., 228 FRD 174, 187 [WDNY 2005] [internal citations omitted].)

8. According to the moving papers, Named Plaintiffs have contributed a significant amount of time and effort to the case. (Memo in Supp at 9-10, citing NYSCEF Doc Nos 98, 99, and 57, Reeves Aff. ¶¶ 4-40; Booth Aff. ¶¶ 4-39; Huot Decl. ¶¶ 73-75, respectively.) Named Plaintiffs, among other things, contributed information about the job duties and Defendants' policies with respect to similarly situated individuals, who are now Class Members, provided witnesses and additional information relating to the claims brought on behalf of the Class Members, provided information about these Class Members, reviewed documents produced by Defendants and the Class Members as well as Defendants' intricate tip matrixes, appeared for numerous in-person preparation sessions and a lengthy full-day mediation, participated in lengthy conference calls, followed up with the Class Members, and reviewed and commented on the terms of the Settlement. (*Id.*) Throughout the litigation and subsequent resolution of this case, Named Plaintiffs remained involved in the litigation and knowledgeable about the law and facts regarding the lawsuit. (*Id.*) Named Plaintiffs' efforts, which were critical to the litigation and resolution of this case, "exemplify the very reason courts award service fees." (*Compare Fernandez v Legends Hospitality, LLC*, 2015 WL 3932897, at *4 [Sup Ct June 22, 2015] *and Mancia v HSBC Sec. (USA) Inc.*, 2016 WL 833232, at *3 [Sup Ct Feb. 19, 2016] *with Reyes, et al. v 600 West 169th Rest. Inc. d/b/a Coogan's, et al*., 2019 WL 7212476 [Sup Ct Dec. 20, 2019] [This Court declined granting service fees where named plaintiffs made no showing as to the reasonable value of legal services rendered.].) Further, Named Plaintiffs in the present case risked adverse employment consequences by their public involvement in the case. (*See Frank*, 228 FRD at 187.) Moreover, the requested payments

are within the range awarded by courts in New York. (*See Hosue*, 2017 WL 4011213, at *3 [awarding service payments totaling $10,000 to named plaintiff and two class members for expending time and efforts to assist counsel and advancing the prosecution and resolution of the lawsuit on behalf of the class from a settlement fund of $145,000 in a wage and hour class action]; *Fernandez*, 2015 WL 3932897, at *4 [awarding service payments totaling $15,000 to named plaintiffs from a settlement fund of $274,998 in a wage and hour class action]; *see also Robinson v Big City Yonkers, Inc.*, 179 AD3d 961, 962 [2d Dept 2020] [approving the service payments to several plaintiffs from the settlement amount and reversing the decision on other grounds in a wage and hour class action]; *Spagnuoli v Louie's Seafood Rest., LLC*, 2018 WL 7413304, at *6 [EDNY Sept. 27, 2018] [awarding service payments totaling $7,500 to named plaintiffs from a settlement fund of $87,500 in a wage and hour class action]; *Hastings v Regeis Care Ctr., LLC*, 2018 WL 6488279, at *2-3 [NY Sup Ct, Bronx County, 2018] [awarding service fees].) Additionally, the service payments in the present case will not reduce the 100% recovery of economic damages for Class Members. (Memo in Supp at 3, citing NYSCEF Doc No 57, Huot Decl. ¶¶ 19-20.) Further, no Class Members objected to Named Plaintiffs' receiving the requested service payments. (Huot Decl. ¶ 34; NYSCEF Doc No 105, Jenkins Aff. ¶¶ 28-29.) Parenthetically, based upon the submitted papers, numerous Class Members strongly support the service payments. (*See* Huot Decl. ¶ 35; NYSCEF Doc Nos 59-94, Exs B-KK [Class Member Declarations].)

9. As previously stated, this Court—in a prior, unrelated class action matter—declined to approve a service award to the named plaintiffs. In the instant matter, the facts and circumstances are different and the Court holds differently herein. Moreover, this Court now agrees, as argued by the Plaintiffs, that CPLR 909 does not automatically preclude the issuance of service awards and is to be evaluated on a case-by-case basis and is appropriate in the instant case. Although CPLR 909 was amended in 2011 after *Flemming v Barnwell Nursing Home & Health Facilities, Inc.*, 15 NY3d 375 (2010), and now provides to allow both representatives "and/or . . . any other person that the court finds has acted to benefit the class" to recover attorneys' fees, the legislature did not at the same time provide for the payment of a service/incentive award or preclude such a payment. Notwithstanding this lack of an express provision in the CPLR, courts have continued to grant service/incentive awards to compensate named plaintiffs for their efforts expended "for the benefit of the class as a whole." (*Hastings*, 2018 WL 6488279, at *2.) To emphasize, notwithstanding that the statute does not expressly provide for service/incentive awards, the statute also does not prohibit such an award. Despite the practice of the courts to grant these awards, the fact that the legislature has not acted to amend the statute to prohibit such awards can be taken to show legislative intent in support of such incentive awards. (*Cf. Matter of Leadingage New York, Inc. v Shah*, 153 AD3d 10, 23-24 [3d Dept 2017], *affd*, 32 NY3d 249 [2018] [internal citations and quotations omitted] ["[L]egislative inaction, because of its inherent ambiguity, affords the most dubious foundation for drawing positive inferences."]) Further, this Court is unaware of any appellate court ruling holding that CPLR 909 prohibits the granting of a service award. The Court is aware that such an issue presented to the Appellate Division would be rare, especially in the context of the parties seeking the approval of a class action settlement, there being no incentive by the defendant to object. Considering that

the legislature has provided for class actions and favors class actions in situations as the current matter, it would appear to align with the legislative purpose to encourage individuals to step forward to assist in the prosecution of such cases and that a service award be considered under certain circumstances. Moreover, unlike the settled rule that the legislature must expressly grant attorney fees to be paid by the losing party, there is no such requirement for incentive payments. (*U.S. Underwriters Ins. Co. v City Club Hotel, LLC*, 3 NY3d 592, 597 [2004] ["It is well settled in New York that a prevailing party may not recover attorneys' fees from the losing party except where authorized by statute, agreement or court rule."] [internal citations omitted].) This Court finds that there is no outright prohibition for the issuance of a service award and such an award is appropriate in the instant case.

ii. Fee & Cost Payments

10. On November 20, 2019, the Court appointed Plaintiffs' Counsel, Faruqi & Faruqi, LLP, as Class Counsel reasoning that Faruqi & Faruqi, LLP, met all of the requirements under CPLR 901(a)(4). (NYSCEF Doc No 48 [Preliminary Approval Order and Decision].) The Court hereby grants the requested fee of $154,151.25 to Class Counsel, which is 33.33% of the Settlement Fund.

11. CPLR 909 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 based on the reasonable value of legal services rendered[.]" A Court may calculate reasonable attorney's fees by either the lodestar/multiplier method (multiplying the hours reasonably billed by a reasonable hourly rate) or based on a percentage of the recovery. (*Fiala*, 27 Misc 3d at 610; *see also In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *24 [SDNY Nov. 26, 2002], *affd sub nom. Adams v Rose*, 2003 WL 21982207 [2d Cir Aug. 20, 2003] [describing the lodestar analysis].) 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." *Cox*, 26 Misc.3d 1220(A), at *4.)

12. Public policy favors a common fund attorneys' fee award in wage-and-hour class actions. (*See Johnson v Brennan*, 2011 WL 4357376, at *19 [SDNY 2011] ["If not, wage-and-hour abuses would go without remedy because attorneys would be unwilling to take on the risk."]; *see also Sand v Greenberg*, 2010 WL 69359, at *3 [SDNY 2010] ["But for the separate provision of legal fees, many violations of the Fair Labor Standards Act would continue unabated and uncorrected."].)

13. "Common fund recoveries are contingent on a successful litigation outcome." (*Guaman v Ania-Bar NYC*, 2013 WL 445896, at *7 [SDNY 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*, 2010 WL 3322580, at *8 [SDNY 2010] [internal emendation and citation omitted].) Many individual litigants "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*. [internal citation and emendation omitted].)

14. Regardless of the method used to determine reasonable attorney's fees, a court should consider the following factors:

> (1) the risks of the litigation,
> (2) whether counsel had the benefit of a prior judgment,
> (3) the reputation of counsel for the plaintiffs and defendants,
> (4) the magnitude and complexity of the litigation,
> (5) the responsibility undertaken,
> (6) the amount recovered,
> (7) the knowledge the court has of the case's history and the work done by counsel prior to trial, and
> (8) what it would be reasonable for counsel to charge a victorious plaintiff.

(*Fiala*, 27 Misc 3d at 610.)

15. The Court finds the requested fee of $154,000, which represents 33.33% of the Settlement Fund, to be reasonable and consistent with that awarded in similar cases in New York. (*See Guevoura Fund Ltd. v Sillerman*, 2019 WL 6889901, at *15 [SDNY Dec. 18, 2019] [awarding 33.33% fees from the settlement fund]; *Lopez v The Dinex Group, LLC*, 2015 WL 5882842, at *5, [Sup Ct Oct. 6, 2015] [awarding fees of 33.33% of the settlement in a wage and hour class action]; *Gilliam v Addicts Rehab. Ctr. Fund*, 2008 WL 782596, at *5 [SDNY Mar. 24, 2008] [fees of 33.33% is "consistent with the norms of class litigation" in New York].)

16. The requested fee award is also reasonable based on a cross-check of the percentage award against Class Counsel's lodestar. Based on the papers submitted, the requested fee award of $154,151.25 represents a multiplier of 0.41 of Plaintiffs' Counsel's lodestar of $372,812.50 (based on 976.60 hours spent on litigation) and is below the norm in courts in New York. (*See Sewell v Bovis Lend Lease, Inc.*, 2012 WL 1320124, at *13 [SDNY Apr. 16, 2012] ["Courts commonly award lodestar multipliers between two and six."]; *In re Lloyd's Am. Trust Fund Litig*., 2002 WL 31663577, at *27 [SDNY 2002] [a "multiple of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit"]; *In re NASDAQ Market-Makers Antitrust Litig.*, 187 FRD 465, 489 [SDNY 1998] [awarding multiplier of 3.97 times]; *In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138, at *5-*8 [SDNY 1992] [awarding multiplier of 6]; *Rabin v Concord Assets Group, Inc.*, 1991 WL 275757, at *2 [SDNY 1991] [awarding multiplier of 4.4].)

17. Moreover, based on the papers, Plaintiffs' Counsel undertook this action on a fully contingent basis in the face of significant risk with regard to class certification, merits,

and damages. The magnitude and complexity of the litigation as well as the number of members support the requested fee award. The work that Plaintiffs' Counsel has performed litigating and settling this case demonstrates their commitment to the class and to representing the best interests of the class. The recovery for Class Members is significant. Plaintiffs' Counsel have extensive experience representing employees in complex class actions. Public policy considerations also weigh strongly in favor of the fee request. (*Johnson*, 2011 WL 4357376, at *19.)

18. The Court lastly awards Plaintiffs' Counsel reimbursement of their litigation expenses in the amount of $8,268.24. (*In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F Supp 2d 259, 272 [SDNY 2012] ["It is well-settled that attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were incidental and necessary to the representation of those clients."].)

iii. Settlement Administrator Fee

19. Having considered the supplemental affidavit of Jessica Jenkins of Rust Consulting, Inc., the Court approves the settlement administration costs in the amount of $22,000. (NYSCEF Doc No 106, Jenkins Supp. Aff. ¶¶ 5-17.) The Court finds the supplemental affidavit to be sufficient to justify the requested fee and to be fair and reasonable.

C. Settlement Procedure

20. The Effective Date of the Settlement shall be thirty (30) days after the service of a copy of this order with notice of entry, if no appeal is taken from this order. If a party appeals this order, the Effective Date of the Settlement shall be the day after all appeals are finally resolved in approval.

21. Counsel shall serve, via NYSCEF, a copy of the instant decision and order with notice of entry within five (5) days of the filing date of the instant decision and order.

22. Within ten (10) days of the Effective Date, the Claims Administrator shall pay, from the Settlement Fund, the Individual Settlement Amounts, as defined in the Settlement Agreement, to Qualified Class Members, in accordance with the allocation plan described in the Settlement Agreement under the heading "Calculation of Individual Settlement Amounts from the Net Allocation Fund." (*Id.* at 16-17.)

23. Upon completion of payment to the Qualified Class Members and no later than within twenty (20) days of the Effective Date, the Claims Administrator shall pay, in a second installment, Plaintiffs' Counsel's attorneys' fees of $154,151.25 and reimbursement of litigation costs and expenses of $8,268.24 from the Settlement Fund and shall pay the service award of $10,000 to each Named Plaintiff.

24. The Court approves the appointment of Rust Consulting as the Settlement Administrator and, upon completion of the payment of attorney fees and litigation costs and expenses

and service awards, approves the payment of $22,000 to be payable to Rust Consulting for the cost of Settlement Administration as part of the second installment.

25. Upon the Effective Date, the Action will be dismissed with prejudice in its entirety and all members of the Settlement Class who have not excluded themselves from the settlement shall be conclusively deemed to have released and discharged Defendants from, and shall be permanently enjoined from, directly or indirectly, pursuing and/or seeking to reopen, any and all claims that have been released pursuant to the Settlement Agreement. If the Court's order in this paragraph in any way conflicts with the terms of the releases in the Settlement Agreement, parties are to follow the release terms in the Settlement Agreement. (*Id.* at 18 "Releases.")

26. The Court retains continuing jurisdiction to enforce the terms of the Settlement Agreement.

27. The foregoing constitutes the decision, order and judgment of this Court.

06/11/2020
DATE

ROBERT DAVID KALISH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐	REFERENCE