

Charles v Avis Budget Car Rental, LLC
2017 NY Slip Op 32644(U)
December 14, 2017
Supreme Court, New York County
Docket Number: 152627/2016
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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**ROBERT CHARLES, on behalf of himself
and all other similarly situated employees,**

**Honorable Justice
Erika M. Edwards
Index No.: 152627/2016**

Plaintiff,

-against-

AVIS BUDGET CAR RENTAL, LLC,

Defendant.
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The above-entitled matter came before the Court on Plaintiff's Motion for Final Approval of Class Action Settlement, Service Award to Plaintiff, and Award of Class Counsel's Attorneys' Fees and Costs ("Motion for Final Approval").

FINAL JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, SERVICE AWARD TO PLAINTIFF, AND AWARD OF CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS

Plaintiff filed the present Class Action Complaint in New York County Supreme Court on March 28, 2016. The Complaint alleged that Defendant violated the New York Labor Law ("NYLL") and its supporting New York State Department Of Labor Regulations ("NYCRR") during the Class Period because Defendant did not pay current and former operation manager trainees in New York State employed by Defendant ("MTs") overtime of time and one-half their regular rates of pay for all hours worked over forty (40) in a week. A Joint Settlement Agreement and Release ("Settlement Agreement") was executed by all parties to resolve this matter for \$320,000. On September 13, 2017, Plaintiff filed a Motion for Preliminary Approval Of The Settlement Agreement, Certification Of The Class For Settlement Purposes, Appointment Of The Plaintiff As Class Representative, Appointment Of The Law Firm Of Louis Ginsberg, P.C. As

Class Counsel, Approval Of The Class Notice, and Scheduling Of A Fairness Hearing. On October 6, 2017, the Court granted preliminary approval of the Settlement Agreement, certified the Settlement Class, appointed Plaintiff as Class Representative, appointed the Law Firm of Louis Ginsberg, P.C. as Class Counsel, approved the Class Notice, and scheduled a date for the Fairness Hearing.

On November 2, 2017, the Claims Administrator mailed the Class Notice to all Class Members. Subsequently, Plaintiff filed a Motion for Final Approval of Class Action Settlement, Service Award to Plaintiff, and Award of Class Counsel's Attorneys' Fees and Costs. Defendant did not oppose this Motion.

The Court held a Fairness Hearing on December 14, 2017. The Claims Administrator Rust Consulting received 0 objections and 0 opt-outs. There was 1 Class Member who attempted to submit an opt-out/objection but it was rejected on procedural and substantive grounds.

Having considered the Motion for Final Approval of Class Action Settlement, Service Award to Plaintiff, and Award of Class Counsel's Attorneys' Fees and Costs, and the supporting Declaration of Louis Ginsberg, Esq., the oral argument presented at the December 14, 2017 Fairness Hearing, and the complete record in this matter, for the reasons set forth at the December 14, 2017 Fairness Hearing, and for good cause shown,

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

Certification Of The Settlement Class

1. The Court certifies the following class under Article 9 of the New York Civil Practice Law and Rules ("CPLR") for settlement purposes ("Settlement Class"):

All employees who worked as operation manager trainees for Defendant in the State of New York at any time from March 28, 2010 through the date of Preliminary Approval of the Settlement.

Approval Of The Settlement Agreement

2. The Court hereby grants the Motion for Final Approval of Class Action Settlement, Service Award to Plaintiff, and Award of Class Counsel's Attorneys' Fees and Costs and finally approves the settlement as set forth in the Settlement Agreement of \$320,000.00.

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 Met Life Insurance Co., Inc., 899 N.Y.S.2d 531, 537 (NY Sup. Ct. 2010) (citation 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 A.D.2d 154, 160 (1st Dept. 1990)(citations omitted). 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." Fiala at 538 (citation omitted). All of these factors weigh in favor of approving the settlement.

4. 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 Defendant. 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 Class 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 (2nd Cir. 2005) (internal quotation omitted). Additionally, Defendant has and will continue to vigorously contest Plaintiff's claims if the action does not settle. In light of the strength and weaknesses of the case, the settlement easily falls within the range of reasonableness because it achieves a significant benefit for Plaintiff and the Settlement 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 payout to Settlement Class members, rather than "speculative payment of hypothetically larger amount years down the road." Gilliam v. Addicts Rehab. Ctr. Fund, 2008 WL 782596, 5 (S.D.N.Y. 2008) (quoting Teachers' Ret. Sys. Of Louisiana v. A.C.L.N. Ltd., 2004 WL 1087261, 5 (S.D.N.Y. 2004)).

Service Award To The Class Representative

5. The Court finds reasonable the service award of \$10,000.00 for the class representative, Robert Charles, given the significant contributions he made to advance the prosecution and resolution of the lawsuit. This award shall be paid from the settlement fund.

6. A Court may grant service awards in a class action. Such awards "reward 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 (N.Y. Sup. 2007). Service 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.” Frank v. Eastman Kodak Co., 228 F.R.D. 174, 187 (W.D.N.Y. 2005).

7. Plaintiff expended considerable time and effort to assist Class Counsel with the case. As such, his actions exemplify the very reason service fees are awarded. See Frank 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).

8. Plaintiff also assumed significant risks in prosecuting this action. 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 at 187-188 (“Although this Court has no reason to believe that Kodak has or will take retaliatory action towards either Frank or any of the plaintiffs in this case, the fear of adverse consequences or lost opportunities cannot be dismissed as insincere or unfounded.”)

9. The service award totaling \$10,000.00 for Plaintiff is reasonable and well within the range awarded by courts in similar matters. See Capsolas v. Pasta Resources Inc., 2012 WL 4760910, 9 (S.D.N.Y. 2012) (approving service awards of \$20,000 and \$10,000 for class representatives in wage and hour action); Lovaglio v. W & E Hospitality Inc., 2012 WL 2775019, 4 (S.D.N.Y. 2012)(approving service awards of \$10,000 each to three class representatives in wage and hour action); Sewell v. Bovis Lend Lease, Inc., 2012 WL 1320124, 13 (S.D.N.Y. 2012) (approving service awards of

\$15,000 and \$10,000 for the class representatives); Matheson v. T-Bone Restaurant, LLC, 2011 WL 6268216, 9 (S.D.N.Y. 2011) (approving service awards of \$45,000 and \$5,000 for the class representatives in a wage and hour class action); Willix v. Healthfirst, Inc., 2011 WL 754862, 7 (E.D.N.Y. 2011)(approving service awards of \$30,000, \$15,000, and \$7,500 in a wage and hour class action.)

Award Of Fees And Costs To Class Counsel

10. On October 6, 2017, the Court appointed the Law Firm of Louis Ginsberg, P.C. (“Louis Ginsberg, P.C.” or “LG”) as Class Counsel because they did substantial work identifying, investigating, litigating, and settling Plaintiff’s and the Settlement 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.

11. Louis Ginsberg Law Offices are experienced attorneys who have obtained millions of dollars for employees. See Gladys Crawford, on behalf of herself and all others similarly situated v. White Plains Center For Nursing, Case No. 55625/2016 (Hon. Joan B. Lefkowitz 2017)(Louis Ginsberg appointed Class Counsel in wage and hour class action for a class of approximately 41 and received approval of a \$312,500 class-wide settlement); Deborah Clemons, on behalf of herself and all others similarly situated v. A.C.I. Foundation, Ltd and Areba Casriel, Inc., Case No. 154573/2015 (Hon. Manuel Mendez 2017)(Louis Ginsberg appointed Class Counsel in wage and hour class action for a class of approximately 75, received approval of a \$297,000 class-wide settlement and court stated, “LG are experienced attorneys with excellent reputation among the employment law bar and who have obtained millions of dollars for employees.”); Sjewharack v. Queens Long Island Medical Group, P.C., (11 cv 03603 (WFK)(ARL)

(E.D.N.Y.) (Louis Ginsberg appointed Co-Lead Class Counsel in wage and hour class action for a class of approximately 2,500 and received approval of a \$2.45 million class-wide settlement); Ludwig v. Pret A Manger, (11 cv 5677 (BSJ)(AJP)(S.D.N.Y.)) (Louis Ginsberg appointed Co-Lead Class Counsel in wage and hour class action for a class of approximately 165, received approval of a \$299,000 class-wide settlement, and the Court stated that “Each of the firms before me do have experience, substantial experience in prosecuting wage-and-hour actions such as this.”); Ramirez v. Riverbay, 2014 WL 3800886, 7 (S.D.N.Y. 2014) (Louis Ginsberg appointed Co-Lead Class Counsel in wage and hour class action, received Class Certification for 3 subclasses of about 1,700 employees, received approval of a \$6.25 million class-wide settlement and the Court found that “Plaintiffs’ counsel has pursued a number of similar actions and has vigorously litigated the action before this Court.”); Kaye v. Orange Regional Medical Center (Index No.: 2012/003968, Orange County Sup. Ct., J. Colangelo) (Louis Ginsberg appointed Class Counsel in a wage and hour class action and obtained Final Approval of a \$371,739.79 class action settlement.); and *Pierre v. Grandell Rehabilitation and Nursing Center, Inc.* (15 Civ. 967 (ADS) (GRB)) (Louis Ginsberg appointed Class Counsel in a wage and hour class action and obtained a settlement of \$562,500.00 for a class of approximately 154 members.) Class Counsel’s experience 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.

12. The work that Class Counsel has performed in litigating and settling this case demonstrates their commitment to the class and to representing the best interests of the class. Class Counsel has committed substantial resources to prosecuting this case.

13. The Court hereby grants Class Counsel's request for attorney's fees and awards Class Counsel \$106,656.00 which is 33% of the settlement fund.

14. 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 based on the reasonable value of legal services rendered..." CPLR § 909.

15. A Court may calculate reasonable attorney's fees by either the lodestar method (multiplying the hours reasonably billed by a reasonable hourly rate) or based on a percentage of the recovery. Fiala v Met Life Insurance Co., Inc., 899 N.Y.S.2d 531, 540. 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 v. Microsoft Corp., 26 Misc.3d 1220(A), 4 (N.Y. Sup. 2007).

16. Public policy favors a common fund attorneys' fee award in wage and hour class actions. See Johnson v. Brennan, 2011 WL 4357376, 19 (S.D.N.Y. 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, 3 (S.D.N.Y. 2010) ("But for the separate provision of legal fees, many violations of the Fair Labor Standards Act would continue unabated and uncorrected.").

17. "Common fund recoveries are contingent on a successful litigation outcome." Guaman v. Anja-Bar NYC, 2013 WL 445896, 7 (S.D.N.Y. 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, 8 (S.D.N.Y. 2010)(internal quotation marks 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. (citation omitted).

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

“the 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 v Met Life Insurance Co., Inc., 899 N.Y.S.2d 531, 540 (N.Y. Sup. 2010). All of these factors weigh in favor of approving the requested fee.

19. Applying the lodestar method as a comparison, the Court finds that the fee Class Counsel seeks is reasonable, as Class Counsel’s request for 33% of the settlement fund is consistent with that awarded in these types of cases. The fee requested is also reasonable based on the fact Class Counsel did substantial work on a fully contingent basis. See e.g. In re Lloyd’s Am. Trust Fund Litig., 2002 WL 31663577, 27 (S.D.N.Y.

2002)(a “multiple of 2.09 is at the lower end of the range of multipliers awarded by courts”); In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (awarding multiplier of 3.97 times lodestar); Rabin v. Concord Assets Group, Inc., 1991 WL 275757, 2 (S.D.N.Y. 1991)(awarding multiplier of 4.4); In re RJR Nabisco, Inc. Sec. Litig., 1992 WL 210138, 5-8 (S.D.N.Y. 1992)(awarding multiplier of 6). Here, Class Counsel seeks only a small multiplier.

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

21. The Court also awards Class Counsel reimbursement of their litigation expenses in the amount of \$683.11.

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

Settlement Procedure


23. Within seven (7) days of the Effective Date, the Claims Administrator shall pay Class Counsel attorneys’ fees of \$106,656.00 from the settlement fund.

24. Within seven (7) days of the Effective Date, the Claims Administrator shall reimburse Class Counsel for litigation costs and expenses totaling \$683.11 from the settlement fund.

25. 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 after all appeals are finally resolved in favor of final approval.
26. Within seven (7) days of the Effective Date, the Claims Administrator will pay the service award of \$10,000.00 to Plaintiff Robert Charles.
27. Within seven (7) days of the Effective Date, the Claims Administrator shall pay the remainder of the settlement fund (after subtracting for the attorneys' fees, and expenses, the Plaintiff's service award, and the Claims Administrator's fees of \$10,500.00 which are also approved), to Qualified Class Members in accordance with the allocation plan described in the Settlement Agreement.
28. 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.
29. This litigation shall be dismissed with prejudice and all members of the Settlement Class who have not excluded themselves from the settlement shall be conclusively deemed to have released and discharged Defendant 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.

It is so ORDERED this 14th day of December, 2017.


Honorable Justice Erika M. Edwards