SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42
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NADINE CRAPAROTTA, individually and on behalf of other persons similarly situated,

Plaintiff

Index No.153553/2016

v

DECISION AND ORDER

RALPH LAUREN CORPORATION, RALPH LAUREN MEDIA, LLC, and RALPH LAUREN RETAIL, INC.,

Defendant.

MOT SEQ 002

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NANCY M. BANNON, J.

I. INTRODUCTION

In this class action to recover unpaid wages and benefits, the plaintiff moves for the certification of the settlement class, approval of a settlement of the class action, approval of the forms of notices and claims, the appointment of the plaintiff's counsel as class counsel, and the scheduling of a fairness hearing. The defendants do not oppose the motion. The motion is granted.

II. BACKGROUND

The plaintiff, Nadine Craparotta, individually and on behalf of others similarly situated, commenced this action against Ralph Lauren Corporation, Ralph Lauren Media, LLC, and Ralph Lauren

Retail, Inc., alleging that, beginning on April 10, 2009, they violated Labor Law §§ 650 et seq., Labor Law §§ 190 et seq., and 12 NYCRR 142-2.1 by failing to pay the required minimum wage, and instead improperly designated her, and others similarly situated, as an intern or trainee. The class sought to be certified consists of several hundred of these "interns," and is defined as "all current and former unpaid interns engaged by Ralph Lauren Corporation, Ralph Lauren Media, LLC and Ralph Lauren Retail, Inc. at any time during the period from April 10, 2009, to the filing of Plaintiffs' motion to approve" the settlement agreement.

The proposed class settlement will require the defendants to pay the gross sum of $323,452.50 into a settlement fund, of which $107,817.50 thereof is allocated to pay the fees of the plaintiff's attorneys. The defendants agree to separately withhold all appropriate payroll taxes.

III. DISCUSSION

A. Class Certification

CPLR 908 provides that "[a] class action shall not be dismissed, discontinued, or compromised without the approval of the court. Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs." See Desrosiers v Perry Ellis

Menswear, LLC, 139 AD3d 473, 474 (1st Dept. 2016). An action that has yet to be certified as a class action is nonetheless deemed to be a class action for the purpose of the notification provisions of CPLR 908, since the risk that a plaintiff's decision to seek certification may be influenced by whether the settlement is satisfactory or not gives to that plaintiff an opportunity to use the class action claim for unfair personal aggrandizement in the settlement. See Vasquez v National Sec. Corp., 139 AD3d 503 (1st Dept. 2016); Avena v Ford Motor Co., 85 AD2d 149 (1st Dept. 1982).

In any event, the plaintiff satisfied her burden of showing that certification of a class consisting of "all current and former unpaid interns engaged by Ralph Lauren Corporation, Ralph Lauren Media, LLC and Ralph Lauren Retail, Inc. at any time during the period from April 10, 2009, to the filing of Plaintiffs' motion to approve" the settlement agreement is warranted here. Article 9 of the CPLR is to be "liberally construed" (Beller v William Penn Life Ins. Co. of N.Y., 37 AD3d 747, 748 [2nd Dept. 2007]; Jacobs v Macy's E, Inc., 17 AD3d 318, 319 [2nd Dept. 2005]) in favor of the granting of class certification if all of the prerequisites of CPLR 901(a)(1)-(5) and CPLR 902(1)-(5) are met. See Matter of Colt Indus. Shareholder Litig., 77 NY2d 185 (1991); Klein v Robert's Am. Gourmet Food, Inc., 28 AD3d 63 (2nd Dept. 2006); Ackerman v Price

Waterhouse, 252 AD2d 179 (1st Dept. 1998).

> "The prerequisites articulated in CPLR 901(a) include proof that the proposed class is so numerous that joinder of all members is impracticable, that common questions of law and fact applicable to the class predominate over questions affecting only individual members, that claims or defenses of the representative parties are typical of the claims or defenses of the class, and that the class action is superior to other available methods for the fair and efficient adjudication of the controversy."

Globe Surgical Supply v GEICO Ins. Co., 59 AD3d 129, 135-136 (2nd Dept. 2008); see Ackerman v Price Waterhouse, supra. Here, the existence of hundreds of interns who were not paid wages satisfies the numerosity prong of the statute. See Emilio v Robison Oil Corp., 63 AD3d 667 (2nd Dept. 2009). The putative class members share common questions of fact or law regarding the defendants' failure to pay them even a minimum wage for work they performed. See Kudinov v Kel-Tech Constr. Inc., 65 AD3d 481 (1st Dept. 2009). The claims of the class representative are typical of those of the class. The representative has demonstrated that she can fairly and adequately protect the interests of the class, as she has no claims potentially adverse to other class members. The class action procedure appears to be superior to other available methods of adjudicating the controversy, since the amount that might be recovered by an individual class member in a separate lawsuit might be quite modest.

The relevant factors articulated in CPLR 902(1)("[t]he interest of members of the class in individually controlling the

prosecution or defense of separate actions"), CPLR 902(2) ("[t]he impracticability or inefficiency of prosecuting or defending separate actions") and CPLR 902(3) ("[t]he extent and nature of any litigation concerning the controversy already commenced by or against members of the class") may, under the circumstances of this case, be subsumed under the prerequisite of superiority. See CPLR 901(a)(5); Globe Surgical Supply v GEICO Ins. Co., supra. CPLR 902(4), which requires consideration of "[t]he desirability or undesirability of concentrating the litigation of the claim in the particular forum" is satisfied here, since the concentration of the claims in New York County, where the defendants have their principal offices and the internships were served, is desirable. See Galdamez v Biordi Constr. Corp., 13 Misc 3d 1224(A), 2006 NY Slip Op 51969(U), *5 (Sup Ct, N.Y. County 2006), affd 50 AD3d 357 (1st Dept. 2008). CPLR 902(5) requires consideration of "[t]he difficulties likely to be encountered in the management of a class action." The plaintiff has demonstrated that, in light of the fact that the membership in the class is not overwhelmingly large, the internships were similar to each other, and the claims cover only a limited period of time, "the claims as set forth in the complaint can be efficiently and economically managed by the court on a classwide basis." Globe Surgical Supply v GEICO Ins. Co., supra, at 136.

B. Preliminary Approval of Settlement Agreement

This court must make an initial evaluation of whether the proposed settlement "is fair, adequate, reasonable, and in the best interest of class members." Klein v Robert's Am. Gourmet Food, Inc., supra, at 73; Matter of Traffic Exec. Assoc.-Eastern R.R., 627 F2d 631, 634 (2nd Cir. 1980).

> "Where, as here, the action is primarily one for the recovery of money damages, determining the adequacy of a proposed settlement generally involves 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."

Klein, supra, at 73. Since the minimum wage in New York in 2009 was $7.15 per hour, a person working 16 hours per week would have been entitled to $114.40 per week. The lump sum fund set forth in the settlement agreement to properly pay for short-term internships, in which those designated as interns or trainees worked for approximately 16 hours each week for a period of a few months, fairly and adequately compensates the class members for their unpaid wages and is in their best interest.

The settlement here provides for sufficient notice to all class members, as it directs that each member be provided with a copy of the settlement agreement and all forms by first class mail and e-mail. See Vasquez v National Sec. Corp., 48 Misc 3d 597 (Sup Ct, N.Y. County 2015), affd 139 AD3d 503 (1st Dept. 2016). It also provides for opt-out rights for those who wish to

pursue their remedies on an individual basis, and thus comports with the requirements of due process. See Jiannaras v Alfant, 27 NY3d 349 (2016); Hibbs v Marvel Enters., 19 AD3d 232 (1st Dept. 2005). The proposed notice and claim forms conform to generally accepted class action forms. See Hibbs v Marvel Enters., supra; Matter of Colt Indus. Shareholder Litig., 155 AD2d 154 (1st Dept. 1990). The affidavit of the plaintiff's counsel describes dozens of class actions that her firm has litigated successfully, which "amply demonstrated its experience and skill in class action litigation, and that it will adequately represent the interest of all class members." Ackerman v Price Waterhouse, supra, at 195.

C. Fairness Hearing

The plaintiff also seeks an order scheduling a "fairness hearing" pursuant to Fed. R. Civ. P. 23(a)(2), a procedure which has been adopted in CPLR article 9 class actions in New York. See Jiannaras v Alfant, supra. That application is granted, the hearing is scheduled, and all parties shall appear on April 18, 2018, at 3:00 p.m.

IV. CONCLUSION

Accordingly, it is

ORDERED that the plaintiff's motion to certify a settlement

class, to preliminarily approve the settlement agreement dated February 2, 2017, attached, to approve the forms for notices and claims,attached, and to appoint the plaintiff's counsel as class counsel is granted, without opposition, the class is certified, the settlement agreement is preliminarily approved, and the forms are approved; and it is further,

ORDERED that a fairness hearing shall be conducted on April 18, 2018, at 3:00 p.m.

This constitutes the Decision and Order of the court.

Dated: March 9, 2018

ENTER: _____

J.S.C.

HON. NANCY M. BANNON