UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

[redacted], Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ASSISTCARE HOME HEALTH SERVICES LLC (d/b/a PREFERRED HOME CARE OF NEW YORK and PREFERRED HOME CARE OF NEW YORK LLC), Defendant.	Case No. 17 CV 5739-LB

ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF THE CLASS AND COLLECTIVE ACTION SETTLEMENT, PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS AND COLLECTIVE, APPOINTMENT OF CLASS COUNSEL, AND APPROVAL OF THE NOTICE PLAN

Plaintiff moves for Preliminary Approval of the Class and Collective Action Settlement and Related Relief ("Preliminary Approval Motion"). ECF No. 136. Pursuant to the terms of the parties' Final Amended Class Action Settlement Agreement and Release submitted to the Court on November 23, 2020 ("Settlement Agreement"), Defendant does not oppose the Preliminary Approval Motion. See ECF No. 140. As set forth below, the Court preliminarily certifies the class and collective action for settlement purposes, appoints class counsel, and directs notice to the class and collective. The findings and rulings in this Order are made for preliminary settlement approval purposes in this case only and may not be otherwise cited in any other action.

I. Preliminary Approval of the Class and Collective Action Settlement

1. Based upon the Court's review of Plaintiff's Memorandum of Law in Support of her Motion for Preliminary Approval, the Declaration of Steven L. Wittels ("Wittels Decl."), ECF Nos. 137-38, all other papers submitted in connection with Plaintiff's Preliminary Approval Motion, and the relevant legal standards, the Court grants preliminary approval of the settlement memorialized in the Settlement Agreement made by and among Plaintiff [redacted] and Defendant Assistcare Home Health Services LLC (d/b/a Preferred Home Care of New York and Preferred Home Care of New York LLC).

2. The law favors compromise and settlement of class actions. See Karic v. Major Automotive Cos., Inc., No. 09 CV 5708, 2016 WL 1745037, at *4 (E.D.N.Y. Apr. 27, 2016) (noting that "[j]udicial policy favors the settlement and compromise of class actions") (citing Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 116–17 (2d Cir. 2005)). In fact, courts encourage prompt settlement of class actions "because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." Azogue v. 16 for 8 Hospitality LLC, No. 13 CV 7899, 2016 WL 4411422, at *3 (S.D.N.Y. Aug. 19, 2016) (internal quotations and citation omitted).

3. Rule 23 requires court approval of a class action settlement. See Fed. R. Civ. P. 23(e). Approval of a proposed class action settlement lies within the trial court's discretion. Puglisi v. TD Bank, N.A., No. 13 CV 637, 2015 WL 574280, at *1 (E.D.N.Y. Feb. 9, 2015) (citing Maywalt v. Parker & Parsley Petroleum Co., 67 F.3d 1072, 1079 (2d Cir. 1995)). "In exercising this discretion, courts should give proper deference to the private consensual decision of the parties. In evaluating the settlement, the Court should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation . . . ."

Puglisi, 2015 WL 574280, at *1 (internal quotation marks and citations omitted); see also In re EVCI Career Colls. Holding Corp. Sec. Litig., No. 05 Civ. 10240, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007) ("Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement.").

4. Indeed, "[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." Spagnuoli v. Louie's Seafood Rest., LLC, No. 13 CV 4907, 2018 WL 7413304, at *3 (E.D.N.Y. Sep. 27, 2018) (quoting Wal-Mart Stores, 396 F.3d at 116). The presumption is further supported when a settlement is reached with the assistance of an experienced mediator, as is the case here. Ortega v. Uber Techs. Inc., No. 15 CV 7387, 2018 WL 4190799, at *5 (E.D.N.Y. May 4, 2018) (citation omitted).

5. Approval of a class action settlement typically occurs in two phases: "(1) preliminary approval—where 'prior to notice to the class, a court makes a preliminary evaluation of fairness,' and (2) final approval—where 'notice of a hearing is given to the class members, [and] class members and settling parties are provided the opportunity to be heard on the question of final court approval.'" In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 330 F.R.D. 11, 27 (E.D.N.Y. 2019) (citation omitted).

6. To grant preliminary approval, which Plaintiff seeks here, following the 2018 amendments to Rule 23(e), the Court "must determine whether 'giving notice is justified by the parties' showing that the court *will likely be able to*: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.'" In re Payment Card, 330 F.R.D. at 28 (quoting Fed. R. Civ. P. 23(e)(1)(B)(i–ii)) (emphasis in original).

7. "To be likely to approve a proposed settlement under Rule 23(e)(2)," the Court must find that the settlement "is fair, reasonable, and adequate." In re GSE Bonds Antitrust Litig., 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019). "The newly amended Rule 23 enumerates four factors for the Court to consider as part of this inquiry: (1) adequacy of representation, (2) existence of arm's-length negotiations, (3) adequacy of relief, and (4) equitableness of treatment of class members." Id. (citing Fed. R. Civ. P. 23(e)(2)). "Prior to the 2018 amendments, courts in the Second Circuit considered whether a settlement was 'fair, reasonable, and adequate' under nine factors set out in City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974)." Id.[1] "The Advisory Committee Notes to the 2018 amendments indicate that the four new Rule 23 factors were intended to supplement rather than displace these 'Grinnell' factors." Id. (citing 2018 Advisory Notes to Fed. R. Civ. P. 23, Subdiv. (e)(2)); see also In re Payment Card, 330 F.R.D. at 29 ("Indeed, there is significant overlap between the Grinnell factors and the Rule 23(e)(2)(C–D) factors . . . ."). "Accordingly, the Court considers both sets of factors in its analysis . . ." In re GSE Bonds, 414 F. Supp. 3d at 692.

8. The Court has considered: (i) Plaintiff's preliminary approval motion, and the papers filed and arguments made in connection therewith; (ii) the Settlement Agreement; and (iii) the Rule 23(e)(2) and Grinnell factors. Considering these factors, the Court concludes that

[1] The Grinnell factors are: "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the state of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." In re Payment Card, 330 F.R.D. at 29 (citations omitted).

it will likely be able to approve the settlement under Rule 23(e)(2) and certify the class for purposes of judgment. Fed. R. Civ. P. 23(e)(1)(B)(i–ii).

9. The Court finds that the Settlement Agreement is the result of extensive, arm's-length negotiations by counsel experienced in the prosecution and defense of wage and hour class and collective actions. The parties held an in-person settlement conference with this Court as well as multiple post-Memorandum of Understanding telephonic conferences to address the Court regarding the settlement. Further, an experienced employment mediator with special expertise in home health care wage and hour cases, Martin F. Scheinman, Esq., also assisted the parties with the settlement negotiations and presided over two full-day mediations and numerous post-mediation conference calls. Such use of a mediator generally supports a finding that the resolution was not collusive. See, e.g., Ortega, 2018 WL 4190799, at *3, 5.

10. The Court is satisfied for the purposes of preliminary approval that: 1) plaintiff and her counsel have adequately represented the class; 2) the settlement was negotiated at arm's-length; 3) the proposed settlement relief is adequate; and 4) the settlement treats class members equitably relative to each other. See Fed. R. Civ. P. 23(e)(2). Moreover, the totality of the Grinnell factors weigh in favor of preliminary approval of the settlement.

II. Preliminary Certification of the "Rule 23 Class" Pursuant to Rule 23

11. "Provisional settlement class certification and appointment of class counsel have several practical purposes, including avoiding the costs of litigating class status while facilitating a global settlement, ensuring notification of all Class Members of the terms of the proposed Settlement Agreement, and setting the date and time of the final approval hearing." Puglisi, 2015 WL 574280, at *2 (citations omitted).

12. For settlement purposes only, the Court provisionally certifies the following class under Federal Rule of Civil Procedure 23(e):

> All individuals who have been employed by Defendant as Home Health Care Attendants, which term shall include, but not be limited to, hourly Home Care Aides, Home Health Aides, Home Health Attendants, Home Attendants, Personal Care Aides, Personal Care Assistants, Personal Assistants Unskilled, Personal Assistants performing consumer directed personal assistance (CDPAPs), Live-in Home Health Care Attendants, private pay Home Health Care Attendants, and all others providing home care services, at any time from September 29, 2011 through November 6, 2020.

13. Plaintiff meets the requirements for class certification under Federal Rule of Civil Procedure 23(a) and (b).

14. Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(1)'s numerosity requirement because there are approximately 19,000 members of the proposed Class ("Class Members"). Wittels Decl. ¶ 71; Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995) ("[N]umerosity is presumed at a level of 40 members . . ."); see also Hernandez v. Immortal Rise, Inc., 306 F.R.D. 91, 97 (E.D.N.Y. 2015) (finding that numerosity was satisfied by a class of approximately 150 putative members). Here, where the class has approximately 19,000 members, the class is sufficiently numerous "that joinder of all members is impracticable." See Fed. R. Civ. P. 23(a)(1).

15. Plaintiff also satisfies Federal Rule of Civil Procedure 23(a)(2)'s commonality requirement because Plaintiff and the Class Members share common issues of fact and law, including whether Defendant properly paid Plaintiff and Class Members and whether Defendant acted willfully or in reckless disregard of its obligations under the law. See Wittels Decl. ¶¶ 72-73; Cazares v. AVA Rest. Corp., No. 15 CV 0477, 2017 WL 1229727, at *4 (E.D.N.Y. Mar. 31, 2017) (citation omitted) ("In wage cases, the commonality requirement is

usually satisfied where the plaintiffs allege that defendants had a common policy or practice of unlawful labor practices."); Moreira v. Sherwood Landscaping Inc., No. 13 CV 2640, 2015 WL 1527731, at *11-12 (E.D.N.Y. Mar. 31, 2015) (citations and quotation marks omitted) ("[C]laims by workers that their employers have unlawfully denied them wages to which they were legally entitled have repeatedly been held to meet the commonality prerequisite for class certification."); Omar v. 1 Front St. Grimaldi, Inc., No. 16 CV 5824, 2019 WL 1322614, at *10 (E.D.N.Y. Jan. 8, 2019) (finding commonality satisfied where plaintiff and class members brought claims for, *inter alia*, unpaid overtime and wages as well as failure to maintain accurate time records).

16. Federal Rule of Civil Procedure 23(a)(3)'s typicality requirement is likewise satisfied here because Plaintiff's claims arise from the same factual and legal circumstances that form the basis of the Class Members' claims. See Wittels Decl. ¶ 73. Notably, "the typicality requirement is not highly demanding." Willix v. Healthfirst, Inc., No. 07 CV 1143, 2009 WL 6490087, at *3 (E.D.N.Y. Dec. 3, 2009) (citation omitted). It is satisfied "when each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." Lopez v. Setauket Car Wash & Detail Ctr., 314 F.R.D. 26, 29 (E.D.N.Y. 2016) (citation omitted). It is generally not defeated by "minor variations in the fact patterns underlying individual claims," where the wrong is alleged to have occurred in the same general fashion against the class representative and class members. See Robidoux v. Celani, 987 F.2d 931, 936–37 (2d Cir. 1993). Here, typicality is easily met because all Class Members, including Plaintiff, "were employed by the defendant[] and allegedly were subjected to the same allegedly unlawful employment practices and policies." Cazares, 2017 WL 1229727, at *5. Cf. Vargas v. Howard, 324 F.R.D. 319, 326

(S.D.N.Y. 2018) (finding typicality met where "[t]he representatives' claims against Defendants, like the claims of the absent class members, arise out Defendants' policies and course of conduct regarding the ways in which [class members] were paid for their labor."); Lopez, 314 F.R.D. at 29 ("[S]ince the claims at issue here stem from the common question of whether Defendants' policy violated the law, the claims and defenses of the representative Plaintiffs are typical of those of the class.").

17. Plaintiff also satisfies Federal Rule of Civil Procedure 23(a)(4)'s adequacy requirement that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Plaintiff must demonstrate that 1) class counsel is "qualified, experienced, and generally able to conduct the litigation[,]" and 2) that her interests are not "antagonistic" to the interests of other members of the class. In re Drexel Burnham Lambert Grp., Inc., 960 F.2d 285, 291 (2d Cir. 1992). See also Hernandez, 306 F.R.D. at 98 (citation omitted) ("Only a fundamental conflict of interest between a representative and the class or subclass will defeat the adequacy of representation requirement."); Mendez v. MCSS Rest. Corp., No. 16 CV 2746, 2019 WL 2504613, at *10 (E.D.N.Y. June 17, 2019) (same). Here, Plaintiff's Counsel satisfies Rule 23(a)(4)'s adequacy requirement because Plaintiff's attorneys have substantial experience in prosecuting employment class actions and are well-versed in wage and hour law. Wittels Decl. ¶ 74. Moreover, there is no evidence of antagonism between Plaintiff and the Class Members. See Mendez, 2019 WL 2504613, at *10 (finding adequacy satisfied where plaintiffs "allege a common practice or policy of unlawful labor practices [and] their claims will require similar legal and factual proof to those of absent class members.").

18. Federal Rule of Civil Procedure 23(b) is also satisfied. Plaintiff requests certification of a Rule 23(b)(3) damages class. Plaintiff satisfies Rule 23(b)(3)'s requirement that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This inquiry examines "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). District courts "have routinely found that common questions predominate in wage and hour actions brought on behalf of a class of employees of the same employer challenging allegedly illegal policies and practices." Murphy v. LaJaunie, No. 13 Civ. 6503, 2015 WL 4528140, at *7 (S.D.N.Y. July 24, 2015) (collecting cases). In fact, "[n]umerous courts have found that wage claims are especially suited to class litigation—*perhaps the most perfect questions for class treatment*—despite differences in hours worked, wages paid, and wages due." Mendez, 2019 WL 2504613, at *11 (emphases added) (internal citation and quotation marks omitted). Thus, for all Class Members, the issue of whether they were the victims of alleged unlawful wage and hour practices will predominate over any individualized inquiries "because [Defendant] will likely be liable to all parties or to none." Cazares, 2017 WL 1229727, at *7; see also Atakhanova v. Home Family Care, Inc., No. 16 CV 6707, 2020 WL 4207437, at *9 (E.D.N.Y. July 22, 2020) (quoting Iglesias-Mendoza v. La Belle Farm, Inc., 239 F.R.D. 363, 373 (S.D.N.Y. 2007)) ("Some factual variation among the circumstances of the various class members is inevitable and does not defeat the predominance requirement.").

19. Regarding Rule 23(b)(3)'s superiority requirement, the rule provides a list of non-

exhaustive factors the Court may consider, including: individual class members' interest in bringing, or whether they have already brought, individual actions; the desirability of concentrating the litigation of the claims in this forum; and the likely difficulties of managing the case as a class action. Fed. R. Civ. P. 23(b)(3)(A-D). Here, these factors strongly weigh in favor of certification. See Wittels Decl. ¶ 75-77. Plaintiff is unaware of any pending individual litigation arising from the same allegations, id. ¶ 76, and it is unlikely that a meaningful number of proposed Class Members will bring separate actions given that they are mostly "low-wage workers with limited resources and . . . command of the English language or familiarity with the legal system." Iglesias-Mendoza, 239 F.R.D. at 373. See also Moreira v. Sherwood Landscaping Inc., No. 13 CV 2640, 2015 WL 1527731, at *15 (E.D.N.Y. Mar. 31, 2015) (noting that where "many potential class members are foreign-born . . . and may fear reprisal from Defendants . . . a class action . . . is likely the only device by which many of the proposed class members would obtain relief.") (internal citations and quotation marks omitted). Further, "[c]ourts routinely hold that a class action is superior where, as here, potential class members are aggrieved by the same policies, the damages suffered are small relative to the expense and burden of individual litigation, and some potential class members are currently employed by the defendants." Cazares, 2017 WL 1229727, at *8 (quoting Fonseca v. Dircksen & Talleyrand Inc., No. 13 Civ. 5124, 2015 WL 5813382, at *4 (S.D.N.Y. Sept. 28, 2015)). To date, no difficulties have occurred in managing this action and this District is an appropriate forum for adjudicating this case, as many Class Members performed work for Defendant in this District. Additionally, the Court has already conditionally certified Plaintiff's claims under the Fair Labor Standards Act (ECF No. 66) and there is "overwhelming precedent in the Second Circuit supporting certification of simultaneous

NYLL class actions and FLSA collective actions." Damassia v. Duane Reade, Inc., 250 F.R.D. 152, 164 (S.D.N.Y. 2008).

20. Employing the class action device here will not only achieve economies of scale for Class Members, who have limited financial resources with which to prosecute individual actions, but will also conserve judicial resources, prevent inconsistent adjudications of similar issues and claims, and avoid the waste and delay of repetitive proceedings. See Karic, 2016 WL 1745037, at *12 (approving class where plaintiffs claimed that "proceeding as a class action will achieve economies of scale for the Class Members and preserve judicial resources by consolidating common issues of fact and law, with the result of preserving public confidence in the system by avoiding inconsistent adjudications," and noting that "there is no indication that the Class Members desire to control their own cases."); Amchem, 521 U.S. at 617 (citation omitted) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor."). Thus, class treatment is the superior means of adjudicating Plaintiff's and Class Member's claims.

III. Conditional Certification of the "FLSA Collective" Pursuant to 29 U.S.C. § 216(b)

21. The Court also conditionally certifies the following FLSA Collective under 29 U.S.C. § 216(b) for settlement purposes only:

> All individuals who have been employed by Defendant as Home Health Care Attendants which term shall include, but not be limited to, hourly Home Care Aides, Home Health Aides, Home Health Attendants, Home Attendants, Personal Care Aides, Personal Care Assistants, Personal Assistants Unskilled, Personal Assistants performing consumer directed personal assistance (CDPAPs), Live-in Home Health Care Attendants, private pay Home Health Care Attendants, and all

others providing home care services, at any time since September 29, 2014 through November 6, 2020.

22. Section 216(b) of the FLSA provides that plaintiffs must be "similarly situated" in order to pursue an FLSA collective action. See 29 U.S.C. § 216(b). On March 20, 2019, the Court entered the parties' stipulation that Plaintiff is similarly situated to Defendant's other Home Health Care Attendants. ECF No. 66. At that time, however, the issue of "who is similarly situated," was left open "to be negotiated by the parties with the assistance of the Court if such assistance is necessary." Id. The parties have now agreed on the definition of the FLSA Collective and thus there are no further impediments to notifying potential Collective Members of the settlement and their right to opt into the settlement. See Settlement Agreement § 1.13 (defining FLSA Collective).

23. The Court also preliminarily finds that the proposed FLSA settlement is fair and reasonable. See Cheeks v. Freeport Pancake House, Inc., 796 F.3d 199 (2d Cir. 2015). Whether satisfying Grinnell necessarily satisfies Cheeks is not settled law in this Circuit. Compare Surdu v. Madison Glob., LLC, No. 15 Civ. 6567, 2018 WL 1474379, at *6 (S.D.N.Y. Mar. 23, 2018) ("[S]atisfaction of the Grinnell factor analysis will, necessarily, satisfy the standards of approval of the FLSA settlement.") with Douglas v. Allied Universal Sec. Servs., 371 F. Supp. 3d 78, 82 (E.D.N.Y. 2019) (concluding that "Cheeks and Wolinsky are integral components of the Rule 23(e) preliminary class approval" in a case where the proposed settlement results in dismissal with prejudice of FLSA claims). Regardless, here, the settlement also satisfies Cheeks and Wolinsky.[2] Plaintiff has made a sufficient showing

[2] See Wolinsky v. Scholastic Inc., 900 F. Supp. 2d 332, 335 (S.D.N.Y. 2012) ("In determining whether the proposed settlement is fair and reasonable, a court should consider the totality of circumstances, including but not limited to the following factors: (1) the plaintiff's range of possible recovery; (2) the extent to which 'the settlement will enable the parties to avoid anticipated burdens and expenses in

that the parties have reached a reasonable and fair compromise of contested FLSA claims. Here, the monetary portion of the settlement provides for $6,500,000. Even if the Court were to only consider the $6,500,000 settlement amount, without considering the non-monetary reforms agreed to, this sum is more than 50% of the $12,000,000 damages model Plaintiff used as the basis for her settlement negotiations. See Wittels Decl. ¶ 38. Cf. Siddiky v. Union Square Hosp. Grp., LLC, No. 15 Civ. 9705, 2017 WL 2198158, at *6 (S.D.N.Y. May 17, 2017) (collecting FLSA cases approving settlements where the estimated settlement recovery relative to the maximum potential recovery ranged from 13% to 25%). See also Wittels Decl. ¶ 42; Pl.'s Mem. Law Supp. Mot. Prelim. Approval, ECF No. 137 at 47-51 (using a set of exemplars to show how the settlement allocation formula correlates with Class Members' potential damages). Moreover, the settlement will enable the parties to avoid further protracted litigation and appeals, the litigation risks faced by both sides justify the parties' decision to compromise, and the settlement is the product of arm's-length bargaining between experienced counsel. Accordingly, the Court finds a sufficient basis to certify the FLSA Collective for settlement purposes.

24. In the event of final approval, Class Members who sign, cash, or deposit their settlement check(s) will acknowledge that by signing, cashing, or depositing their settlement checks, they consent to join the collective action against Defendant and agree to release their claims as set forth in the Settlement Agreement. See § 4.3 ("Distribution to Class Members"). All settlement checks shall be deemed filed with the Court at the time each Class Member signs, cashes, or deposits his or her settlement check. A list of the names of all Class

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establishing their respective claims and defenses'; (3) the seriousness of the litigation risks faced by the parties; (4) whether 'the settlement agreement is the product of arm's-length bargaining between experienced counsel'; and (5) the possibility of fraud or collusion.").

Members who have consented to join the FLSA collective action by signing, cashing, or depositing their settlement checks shall be publicly filed on the docket 18 months after the Effective Date, as defined in the Settlement Agreement. See § 1.9. The Court finds that this proposed method for opting into the FLSA Collective, distributing relief to the Class and FLSA Collective, and processing Class Members' claims is an effective and appropriate method in this case. See Fed. R. Civ. P. 23(e)(2)(C)(ii); cf. Chang v. Philips Bryant Park LLC, No. 17 Civ. 8816, 2020 WL 104812, at *2 (S.D.N.Y. Jan. 9, 2020); Villar v. AHRC Home Care Servs., Inc., No. 18 Civ. 9174, 2020 WL 6538750, at *2 (S.D.N.Y. Nov. 6, 2020).

IV. Appointment of Plaintiff's Counsel as Class Counsel

25. The Court appoints Wittels McInturff Palikovic and Hymowitz Law Group, PLLC as Class Counsel because they meet the requirements of Rule 23(g). Fed. R. Civ. P. 23(g). When appointing class counsel, the Court must consider: (1) "the work counsel has done in identifying or investigating potential claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law;" and (4) "the resources that counsel will commit to representing the class[.]" Fed. R. Civ. P. 23(g)(1)(A). In addition, the Court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class[.]" Fed. R. Civ. P. 23(g)(1)(B); see also Fed. R. Civ. P. 23(g)(4) ("Class counsel must fairly and adequately represent the interests of the class."). Class Counsel has substantial experience prosecuting and settling class actions, including wage and hour class actions, and the lawyers assigned to this matter are well-versed in wage and hour law and class action law and are well-qualified to represent the interests of the Class. Further, the work that Class Counsel has done identifying, investigating, pursuing, and

settling Plaintiff's and Class Members' claims demonstrates their skill and commitment to representing the interests of the Class. See Wittels Decl. ¶¶ 3-8.

V. Notice to Class Members

26. The Court approves, as to form and content, the Notice of Proposed Class Action Settlement and Final Approval Hearing (the "Notice"). See ECF No. 140-3.

27. The content of the Notice fully complies with due process and Federal Rule of Civil Procedure 23. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), a notice must provide:

> [T]he best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. . . The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3).

The Notice satisfies each of these requirements and adequately puts Class Members on notice of the proposed settlement. The Notice is based on the Federal Judicial Center's guidance and informs its recipients about how Class Members can exclude themselves from the Settlement, how members of the Class and the FLSA Collective can object to the Settlement, and the consequences of inaction. The notice also describes the material terms of the Settlement, informs Class Members about the attorney's fees, and provides specific information regarding the date, time, and place of the final approval hearing.

28. The Notice also satisfies the requirements of the FLSA. To serve the "broad remedial goal" of the FLSA, courts can order notice to other potentially similarly situated individuals. See Hoffman-La Roche Inc. v. Sperling, 493 U.S. 165, 173 (1989). The benefits to the judicial system of collective actions "depend upon employees receiving accurate and

timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate." Hoffman-La Roche Inc., 493 U.S. at 170. Courts are encouraged to become involved in the notice process early, to ensure "timely, accurate, and informative" notice and to help facilitate the litigation moving forward. See id. at 171–72.

29. For the reasons set forth above, the Court approves the Notice. See Fed. R. Civ. P. 23(e)(1).

VI. Class Action Settlement Procedure

30. The Court directs the mailing of the Notice to Class Members in accordance with the schedule and procedures set forth in the Settlement Agreement. See Settlement Agreement § 3.6. The Court finds that the method and dates selected for distributing the Notice meet the requirements of due process, provide the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons entitled to notice.

31. Class Members must submit to the Settlement Administrator any opt-out statement or objection by the Bar Date, which shall be sixty (60) days after the initial mailing of the Notice by the Settlement Administrator. See Settlement Agreement §§ 3.7, 3.8.

32. Defendant shall notify the Court of any intent to void the settlement within ten (10) business days after receiving the Opt-Out list from the Settlement Administrator. See Settlement Agreement § 3.7(E).

33. The Court directs that Class Counsel shall provide courtesy copies by e-mail of any and all Opt-Out statements to the Court. Instead of providing the Opt-Out statements within three (3) days of receipt, Class Counsel shall provide courtesy copies via e-mail to my Chambers of all Opt-Out statements in a single submission within seven (7) days of the Bar

Date. Class Counsel shall file on the docket a list of the names of all Class Members who opt out of the settlement within fourteen (14) days of the Bar Date. See Settlement Agreement § 3.7.

34. The Court directs that Class Counsel shall provide courtesy copies by e-mail of any and all objections to the Court. Class Counsel shall provide courtesy copies via e-mail to my Chambers of all objections submitted to the Settlement Administrator in a single submission within seven (7) days of the Bar Date and shall file all objections on the docket within eight (8) days of the Bar Date. See Settlement Agreement § 3.8.

35. The parties shall file any responses to objections within fourteen (14) days after Class Counsel provides the Court with courtesy copies of the objections. See Settlement Agreement § 3.8.

36. Class Counsel shall file a Motion for Final Approval of the Settlement Agreement, including the fee petition, no later than (14) days before the Bar Date.

37. If a Class Member intends to object to the settlement through retained counsel, then that counsel must file with the Court and serve on the Settlement Administrator a notice of appearance, which shall include a statement of whether counsel intends to appear at the Fairness Hearing, no later than fourteen (14) calendar days after the Bar Date. See Settlement Agreement § 3.8(B).

38. In addition, if a Class Member wishes to speak at the Fairness Hearing, the Class Member must file a "Notice of Intention to Appear" postmarked no later than April 30, 2021.

39. Pending the Court's final approval of the Settlement Agreement, all proceedings in this action, except those related to approval of the Settlement Agreement, are stayed.

40. Should the final approval of the Settlement not be granted, or should the Effective Date, as that term is defined in the Settlement Agreement, not occur, this Order shall be null and void and of no further force and effect, and the parties shall be restored to their respective positions prior to the execution of the Settlement Agreement. The Settlement Agreement and all negotiations thereto shall be inadmissible, except that the Settlement Agreement may be admitted into evidence or otherwise used for the limited purpose of enforcing the terms of the Settlement Agreement.

41. The final approval hearing will be held by telephone on June 1, 2021, at 10:00 a.m., via the Chambers telephone conference line. Counsel for the parties shall call the Chambers telephone conference line at (888) 363-4734 and use the access code 4444221 promptly at 10:00 a.m.

It is so ORDERED this 25th day of November, 2020, in Brooklyn, NY.

/S/
Hon. Lois Bloom, U.S.M.J