

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EVANS RIVERA, DAN HRCSKO, MARIO
QUIMBAY, JOHN BOUSANTE, and VINICIO
SANTOS, on behalf of themselves and others
similarly situated,

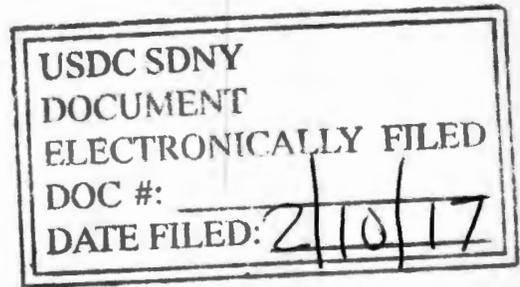
Plaintiffs,

v.

SCOTT CONANT, ANTONELLO PAGANUZZI,
RED ONE HOLDING,
LLC d/b/a LDV SCARPETTA, LUCKY 13 LLC
d/b/a SCARPETTA, and SCOTT
CONANT MANAGEMENT, LLC a/k/a SCM
MANAGEMENT, LLC,

Defendants.

No. 15 CV 04276 (RWS)



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~~PROPOSED~~ ORDER GRANTING (1) PLAINTIFFS' UNOPPOSED MOTION FOR CERTIFICATION OF THE SETTLEMENT CLASS, FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT, AND APPROVAL OF THE FLSA SETTLEMENT; (2) PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF CLASS REPRESENTATIVE SERVICE AWARDS; (3) PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

The Parties entered into a settlement totaling \$1,750,000 on or about October 21, 2016 in a Class and Collective Action Settlement Agreement and Release (hereinafter "Settlement" or "Agreement") and filed for preliminary approval of the settlement on that same date.

On November 17, 2016, this Court entered an Order preliminarily approving the settlement on behalf of the class set forth therein (the "Class" or the "Class Members"), conditionally certifying the settlement class, appointing The Law Office of Jeffrey E. Goldman as Class Counsel, appointing Evans Rivera, Mario Quimbay, Vinicio Santos, Daniel Hrcsko, and John Bousante as class representatives, authorizing the parties to retain Settlement Services,

Inc., as Settlement Administrator, and authorizing notice to all Class Members (the "Preliminary Approval Order"). Docket No. 92.

On February 2, 2017, Plaintiffs filed a Motion for Final Approval of Class and Collective Action Settlement, Claims Administrator's Fees, Service Awards, and Attorney's Fees and Expenses ("Motion for Final Approval"). The motion was unopposed and Defendants took no position with respect to the requests for attorneys' fees, costs or service payments.

The Court held a fairness hearing on February 9, 2017. No Class Member objected to the settlement at or prior to the hearing.

although the weather conditions resulted in the court being close, the parties appeared and written objections were filed.
Having considered the Motion for Final Approval, the supporting declarations and

exhibits, the oral argument presented at the February 9, 2017 fairness hearing, and the complete record in this matter, for the reasons set forth therein and stated on the record at the February 9, 2017 fairness hearing, and for good cause shown,

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

1. Except as otherwise specified herein, the Court for purposes of this Order adopts all defined terms as set forth in the Agreement.
2. This Court has jurisdiction over the subject matter of this litigation and all matters relating thereto, and over all Parties.
3. Pursuant to Rule 23, the Court confirms as final its certification of the Class for settlement purposes based on its findings in the Preliminary Approval Order and in the absence of any objections from Class Members to such certification, the following Class: "all persons who work or have worked as bussers, runners, barbacks, bartenders, servers, captains, and baristas at Scarpetta restaurant in New York City, and who have participated in the tip pools at Scarpetta, at any time between June 3, 2009 and August 9, 2016".

4. Pursuant to 29 § U.S.C. 216(b), the Court approves the FLSA Settlement and certifies the collective class under the FLSA.

5. The Court confirms as final the appointment of Plaintiffs E Evans Rivera, Mario Quimbay, Vinicio Santos, Daniel Hresko, and John Bounsante as representatives of the Class, both under Federal Rule of Civil Procedure 23 and 29 U.S.C. § 216(b).

6. The Court likewise confirms as final the appointment of The Law Office of Jeffrey E. Goldman as Class Counsel for the Class pursuant to Federal Rule of Civil Procedure 23 and for individuals who opted into this litigation pursuant to 29 U.S.C. § 216(b).

7. The Court finds that the Class Notice given to Class Members pursuant to the Preliminary Approval Order constituted the best notice practicable under the circumstances, was accomplished in all material respects, and fully met the requirements of Rule 23, the Fair Labor Standards Act, and due process.

8. Pursuant to Rule 23(e), this Court hereby grants the Motion for Final Approval to the Agreement and finally approves the settlement as set forth therein. The Court finds that the settlement is fair, reasonable and adequate in all respects and that it is binding on Class Members who did not timely opt out (i.e. all Class Members) pursuant to the procedures set forth in the Preliminary Approval Order. The Court specifically finds that the settlement is rationally related to the strength of Plaintiffs' claims given the risk, expense, complexity, and duration of further litigation.

9. The Court finds that the proposed settlement is procedurally fair because it was reached through vigorous, arm's-length negotiations and after experienced counsel had evaluated the merits of Plaintiffs' claims through factual and legal investigation. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005).

10. The settlement is also substantively fair. All of the factors set forth in *Grinnell*, which provides the analytical framework for evaluating the substantive fairness of a class action settlement, weigh in favor of final approval. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). Therefore, the Court finds that the settlement is adequate given: (1) the complexity, expense and likely duration of the litigation; (2) the stage of the proceedings and the amount of discovery completed; (3) the risks of establishing liability and damages; (4) the risks of maintaining the class action through the trial; (5) the lack of any objections; (6) the ability of the defendants to withstand a greater judgment; and (7) that the Total Settlement Amount is within the range of reasonableness in light of the best possible recovery and the attendant risks of litigation. *Grinnell*, 495 F.2d at 463.

11. The Court also finds that the class's reaction to the settlement was positive. No Class Member opted out of the settlement and no Class Member objected to the settlement.

12. The Court finds that the proposed plan of allocation is rationally related to the relative strengths and weaknesses of the respective claims asserted. The mechanisms and procedures set forth in the Agreement by which payments are to be calculated and made to Class Members are fair, reasonable and adequate, and payment shall be made according to those allocations and pursuant to the procedures as set forth in the Agreement.

13. The Court hereby grants Plaintiffs' Motion for Attorneys' Fees and awards Class Counsel \$583,333.33 which is one-third of the Settlement Fund, which the Court finds to be fair and reasonable based on: (A) the number of hours worked by Class Counsel during this litigation; (B) the results achieved on behalf of the Class; (C) the contingent nature of Class Counsel's representation; (D) the complexity of the issues raised by this litigation; (E) a lodestar cross check; and (F) Class Counsel's recognized experience and expertise in the market. The

Court finds Class Counsel's hourly rates to be reasonable.

14. The Court also awards Class Counsel reimbursement of their litigation expenses in the amount of \$5,888.17, which expenses the Court finds were necessarily and reasonably incurred by Class Counsel in prosecuting this litigation. The attorneys' fees and the amount in reimbursement of litigation costs and expenses shall be paid from the Settlement Fund.

15. The Court approves and finds reasonable the service awards for Named Plaintiffs each in the amount of \$10,000 (totaling \$50,000), in recognition of the services they rendered on behalf of the class. The Court also approves and finds reasonable the service awards to the other Class Members who provided affidavits, who shall receive the amount of \$500 each (totaling \$5,000). These service awards shall be paid from the Settlement Fund.

16. The Court approves and finds reasonable the payment of the Settlement Administrator's fees in the amount of \$16,000, which shall be paid from the Settlement Fund.

17. The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Defendants in no way admit any violation of law or any liability whatsoever to Plaintiffs and the Class, individually or collectively, all such liability being expressly denied by Defendants.

18. Neither this Order, Settlement Agreement, nor any other document or information relating to the settlement of this action shall be construed or be admissible in any proceeding as evidence: (a) that any group of similarly situated or other employees exists to maintain a collective action under the FLSA, or a class action under FRCP 23, (b) that any party has prevailed in this case, or (c) that Defendants or others have engaged in any wrongdoing.

19. The Court hereby enters this Final Order and Final Judgment and Dismissal with prejudice. The Court fully and finally dismisses this matter and this litigation in its entirety and

with prejudice. No party to this litigation is or shall be considered a prevailing party.

20. All Class Members are enjoined pursuant to 28 U.S.C. § 1651(a) from initiating or proceeding with any and all suits, actions causes of action, claims, or demands in federal or state court or administrative agency based on putative violations of any state law (including the NYLL and statutory, regulatory, and common law) pertaining to wage and hour claims, including any and all claims that have been asserted or could have been asserted in this action.

21. All Opt-In Plaintiffs, and Class Members who sign their respective settlement check(s), are enjoined pursuant to 28 U.S.C. § 1651(a) from initiating or proceeding with any and all suits, actions causes of action, claims, or demands in federal or state court or administrative agency based on putative violations of the FLSA, including any and all claims that have been asserted or could have been asserted in this action.

22. 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.

It is so ORDERED this 9th day of February 2017.


The Honorable Robert W. Sweet
United States District Judge