

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 KEVIN GARCIA AND PAULA MARTINEZ, :
 themselves and all others similarly-situated, :
 :
 Plaintiffs, :
 :
 -against- :
 :
 1800FIX.COM SATELLITES, LLC, :
 1800FIX.COM DISTRIBUTION, LLC, TONY :
 BREA, LUIS BREA, and ABEL BREA, in their :
 individual and professional capacities, :
 :
 Defendants. :
 -----X

14 Civ. 2845 (RMB) (SN)

ORDER

USDC SDNY
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DOC #:
DATE FILED: 11/2/16

It is hereby ORDERED AND ADJUDGED, on consent of all parties, that a judgment is hereby entered against Defendants 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the total amount of \$552,547.51 representing unpaid overtime under the New York Labor Law ("NYLL"), Fair Labor Standards Act ("FLSA") liquidated damages, NYLL liquidated damages, NYLL statutory damages, and prejudgment interest on NYLL claims.

Of the total judgment sum of \$552,547.51, the following Plaintiffs shall be entitled to the following sums:

- a) Plaintiff Kevin Garcia: \$72,033.14
- b) Plaintiff Paula Martinez: \$74,228.89
- c) Plaintiff Henry Castillo: \$90,346.34
- d) Plaintiff Ariel Santana: \$108,098.47
- e) Plaintiff Georgina Martinez: \$55,491.86

f) Plaintiff Vinny Mercedes: \$10,390.61

See Appendix B for a Letter from Plaintiffs' Counsel assessing the reasonableness of the payments to Plaintiffs.

Of the total sum of \$552,547.51, counsel for Plaintiffs shall be entitled to \$141,958.20, comprised of \$138,136.88^{in 25%} in attorneys' fees, and \$3,821.32 in costs and expenses. See Appendix A for the factors supporting the Court's determination of attorneys' fees. Attorneys' fees and expenses are not to be distributed until at least 80% of the Settlement Fund has been distributed to the Class. Counsel shall advise the Court in writing when this has been accomplished; RMB

It is further ORDERED AND ADJUDGED that all payments to Kevin Garcia, Paula Martinez, Georgina Martinez, Henry Castillo, Ariel Santana, and Vinny Mercedes shall be made within thirty days of the issuance of this Order. Counsel are directed to advise the Court in writing when payments are made to Plaintiffs;

It is further ORDERED and ADJUDGED that that any amount of this judgment attributable to money awarded under the NYLL that remains unpaid upon the expiration of ninety days following the issuance of this Order, or ninety days after expiration of the time to file an appeal and no appeal therefrom is then pending, whichever is later, including fees and interest, shall automatically increase by fifteen percent pursuant to NYLL § 663(4). "Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent";

It is further ORDERED AND ADJUDGED that Defendants must pay any post judgment interest, pursuant to the provisions of 28 U.S.C. § 1961, on the full judgment amount of \$552,547.51 from the date of the entry of the individual judgments, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors, of the Federal Reserve System, for the calendar week preceding the date of judgment until the Defendants 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC comply with the full judgment amount; and

It is further ORDERED AND ADJUDGED that without affecting the finality of this Judgment in any way, this court hereby retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement of the Settlement Fund, including interest earned thereon; and (b) disposition of the Settlement Fund.

It is further ORDERED AND ADJUDGED that the Clerk of Court is directed to close the case.

Dated: New York, New York
November 2, 2016



RICHARD M. BERMAN, U.S.D.J

Appendix A

APPENDIX A
ATTORNEYS' FEES

Plaintiffs' Counsel seeks attorney fees in the amount of \$176,292.88, or 31.9% of the \$552,547.51 total judgment. The Court finds that this amount should be lowered to \$138,136.88, or 25% of the judgment under Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 50 (2d Cir. 2000) as follows:

To determine a reasonable fee “district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: ‘(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.’” Id. at 50 (citation omitted).

The first Goldberger factor relates to “the time and labor expended by counsel.” Goldberger, 209 F.3d at 47. The Court must “scrutinize[] the fee petition to ascertain the number of hours reasonably billed to the class.” Id. Having done so, the Court is not convinced that the billing records submitted by Plaintiffs' counsel fully support the claimed lodestar of \$179,998.50 (See Billing Records, submitted October 14, 2016, at 88.) A number of Plaintiffs' billing entries are imprecise and vague, including entries for “File Review” without any additional explanation (Billing Records, at 47, 48, and 50.) Other vague entries include “conduct[ing] legal research”, “[p]reparation for trial”, and “[p]reparation for court conference.” Courts “routinely apply across-the-board reductions for vague entries.” AFL-CIO v. Integrated Structures Corp., No. 12 Civ. 6354, 2013 WL 4095651, at *12 (E.D.N.Y. Aug. 13, 2013); Beckert v. Ronirubinoy, No. 15 Civ. 1951, 2015 WL 8773460, at *2 (S.D.N.Y. Dec. 14, 2015).

In addition, Louis Leon, an associate at Borrelli & Associates, P.L.L.C., charges an hourly rate of \$400 and billed 190.7 hours to the case. An hourly rate of \$400 appears somewhat

high given Mr. Leon’s approximately two years of FLSA litigation experience. “It is now well established . . . that the prevailing hourly rate for partners in this district ranges from \$300 to \$400, and a reasonable hourly rate for a senior associate ranges from \$200 to \$300. Junior associates generally command \$100 to \$150 per hour.” Hui Luo v. L & S Acupuncture, P.C., No. 14 Civ. 1003, 2015 WL 1954468, at *2 (E.D.N.Y. Apr. 29, 2015) (citations omitted).

As to the second and third Goldberger factors – i.e., “the magnitude and complexities of the litigation” and the risk of pursuing the case on a contingency basis – the Court finds that the complexity and risks faced by Plaintiffs are not significantly different or greater than those faced by Plaintiffs in other FLSA cases. “In most cases, obligations under the FLSA and NYLL are relatively clear and liability turns on factual issues.” Fujiwara v. Sushi Yasuda Ltd., 58 F. Supp. 3d 424, 435 (S.D.N.Y. 2014). See also Bodon v. Domino’s Pizza, LLC, No. 09 Civ. 2941, 2015 WL 3990677, at *11 (E.D.N.Y. 2015). The Court acknowledges that counsel conducted discovery as well as motions for class certification and summary judgment.

As to the fourth Goldberger factor – i.e. “quality of the representation” – the Court notes that Plaintiff’s counsel, Borrelli & Associates, P.L.L.C. is qualified and experienced. In both their submissions and appearances before the Court, class counsel has demonstrated competence and professionalism.

With respect to the fifth Goldberger factor – i.e., “the requested fee in relation to the settlement” – the Court finds that a 25% fee is reasonable under the circumstances of this case and is consistent with fees granted in other FLSA cases. See Asare v. Change Group of New York, Inc., No. 13 Civ. 3371, 2013 WL 6144764, at *21 (S.D.N.Y. Nov. 18, 2013).

As to the sixth Goldberger factor—“public policy considerations”—a fee award of 25% of the judgment both encourages plaintiffs’ counsel to pursue FLSA litigation while also

guarding against excessive fees. “[A] fee award must balance the public policy of enforcing the FLSA with the ‘overarching concern for moderation.’” Monserrate v. Tequipment, Inc., No. 11 Civ. 6090, 2012 WL 5830557, at *4 (E.D.N.Y. Nov. 16, 2012) (quoting Goldberger, 209 F.3d at 53).

For these reasons, the Court awards Plaintiffs’ counsel legal fees of \$138,136.880 or 25% of the judgment amount. The difference between the proposed attorneys’ fees of \$176,292.88 and the awarded fees of \$138,136.88, i.e. \$38,156.00, shall be distributed to the six Plaintiffs on a pro rata basis.

The Court approves Plaintiffs’ counsels’ itemized costs in the amount of \$3,821.32.

Appendix B

BORRELLI & ASSOCIATES

P.L.L.C.

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October 28, 2016

Via ECF

The Honorable Richard M. Berman
United States District Judge for the
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Kevin Garcia and Paula Martinez, et al. v. 1800fix.com Satellites, LLC, et al.*
Docket No: 14-CV-2845 (RMB)

Dear Judge Berman:

We represent the six Plaintiffs in the above-referenced wage and hour matter brought pursuant to the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”). As per the Court’s request, we write to advise the Court as to why the parties’ proposed judgment is fair and reasonable.¹

As the Court knows, after its rulings on the parties’ summary judgment motions which, *inter alia*, found Defendants liable under the FLSA and NYLL as a matter of law and found that Plaintiffs may recover liquidated damages under both statutes, *see* Dkt. 109, at the Court’s suggestion, the parties stipulated as to the remaining three issues left for trial in the following way: (1) all Plaintiffs in this action worked fifty-one hours per week through their employment, rather

¹ This directive is not pursuant to an Order that is on the docket. Rather, David Imamura, Your Honor’s Clerk, informed us by telephone that Your Honor wanted Plaintiffs to file a letter which “briefly” discussed why the proposed judgment is fair and reasonable as to Plaintiffs’ recovery of damages, but that Your Honor did not need us to address Plaintiffs’ attorneys’ fees and expenses. While we will of course comply with the Court’s directive, we simply note that to the extent this directive is based on *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015), that source of authority would be misplaced, as *Cheeks*, by its express terms, only applies to dismissal pursuant to Federal Rule of Civil Procedure 41.

than fifty-four (as Plaintiffs contended) or forty-eight (as Defendants did); (2) Plaintiff Vinny Mercedes worked for Defendants for twenty weeks, rather than four (as Defendants claimed) or forty-three (as Mercedes claimed); and (3) the statute of limitations for all Plaintiffs' FLSA claims in this matter would be two and one-half years, rather than two (as Defendants contended because their conduct was not willful) or three (as Plaintiffs urged that Defendants' conduct was willful). As such, based on those three stipulations, there were no more remaining factual issues left for trial. Finally, on June 29, 2016, the parties submitted a proposed judgment to the Court, which incorporated the above-referenced stipulations and a detailed explanation of how much each Plaintiff would receive under it. *See Exhibit A.*

Kevin Garcia

Mr. Garcia alleges that he regularly worked fifty-four hours per week from on or around November 1, 2010 until on or around June 31, 2013 and that Defendants failed to pay him overtime compensation during this time period. Plaintiffs calculate his total maximum damages to be **\$83,397.32** (\$28,362.60 in unpaid wages under the NYLL, \$17,951.56 in FLSA liquidated damages, \$25,329.57 in NYLL liquidated damages, \$2,500 in NYLL statutory damages, and \$9,253.59 in prejudgment interest on NYLL claims).

Under the proposed judgment, Mr. Garcia is due **\$65,339.11** (this figure comprised of \$22,284.90 in unpaid overtime under the NYLL, \$14,981.56 in FLSA liquidated damages, \$19,901.81 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$5,670.84 in prejudgment interest on NYLL claims).

Paula Martinez

Ms. Paula Martinez alleges that she regularly worked fifty-four hours per week from on or around April 1, 2010 until on or around November 31, 2013 and that Defendants failed to pay her overtime compensation during this time period. Plaintiffs calculate her total maximum damages to be **\$81,252.61**. (\$31,323.32 in unpaid wages under the NYLL, \$16,740.68 in FLSA liquidated damages, \$23,810.57 in NYLL liquidated damages, \$2,500 in NYLL statutory damages, and \$6,878.04 in prejudgment interest on NYLL claims).

Under the proposed judgment, Ms. Paula Martinez is due **\$67,330.81** (this figure comprised of \$24,611.18 in unpaid overtime under the NYLL, \$12,582.68 in FLSA liquidated damages, \$18,708.31 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$8,928.64 in prejudgment interest on NYLL claims).

Henry Castillo

Mr. Castillo alleges that he regularly worked fifty-four hours per week from on or around December 1, 2009 to on or around February 31, 2013 and that Defendants failed to pay him overtime compensation during this time period. Plaintiffs calculate his total maximum damages to be **\$88,197.27** (this figure comprised of \$35,372.54 in unpaid wages under the NYLL, \$10,397.38 in FLSA liquidated damages, \$20,520.29 in NYLL liquidated damages, \$2,500 in NYLL statutory damages, and \$19,407.06 in prejudgment interest on NYLL claims).

Under the proposed judgment, Mr. Castillo is due **\$81,950.49** (this figure comprised of \$27,792.71 in unpaid overtime under the NYLL, \$3,713.05 in FLSA liquidated damages, \$16,123.09 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$22,288.14 in prejudgment interest on NYLL claims), in favor of opt-in Plaintiff Henry Castillo

Ariel Santana

Mr. Santana alleges that he regularly worked fifty-four hours per week from on or around August 1, 2010 until on or around September 31, 2014 and that Defendants failed to pay him overtime compensation during this time period. Plaintiffs calculate his total maximum damages to be **\$122,164.21** (this figure comprised of \$43,848.00 in unpaid wages under the NYLL, \$22,134.00 in FLSA liquidated damages, \$39,438.00 in NYLL liquidated damages, \$2,500 in NYLL statutory damages, and \$14,244.21 in prejudgment interest on NYLL claims).

Under the proposed judgment, Mr. Santana is due **\$98,052.90** (this figure comprised of \$34,452.00 in unpaid overtime under the NYLL, \$14,025.00 in FLSA liquidated damages, \$30,987.00 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$16,088.90 in prejudgment interest on NYLL claims).

Georgina Martinez

Ms. Georgina Martinez alleges that she regularly worked fifty-four hours per week from on or around January 1, 2010 until on or around August 31, 2012 and that Defendants failed to pay her overtime compensation during this time period. Plaintiffs calculate her total maximum damages to be **\$63,470.50** (this figure comprised of \$25,542.00 in unpaid wages under the NYLL, \$16,096.50 in NYLL liquidated damages, \$2,500 in NYLL statutory damages, and \$19,332.00 in prejudgment interest on NYLL claims).

Under the proposed judgment, Ms. Georgina Martinez is due **\$50,335.00** (this figure comprised of \$19,998.00 in unpaid overtime under the NYLL, \$12,647.25 in NYLL liquidated

damages, \$2,500.00 in NYLL statutory damages, and \$15,190.35 in prejudgment interest on NYLL claims).

Vinny Mercedes

Mr. Mercedes alleges that he regularly worked fifty-four hours per week from on or around January 1, 2013 until on or around October 31, 2013 and that Defendants failed to pay him overtime compensation during this time period. To the contrary, Defendants contend that Mr. Mercedes only worked for them for approximately four weeks and have produced employment records that purport to show same. Plaintiffs calculate his total maximum damages to be **\$22,817.50** (this figure comprised of \$6,772.50 in unpaid wages under the NYLL, \$6,772.50 in FLSA liquidated damages, \$6,772.50 in NYLL liquidated damages, and \$2,500 in NYLL statutory damages).

Under the proposed judgment, Mr. Mercedes is due **\$9,425.00** (this figure comprised of \$2,475 in unpaid overtime under the NYLL, \$2,475.00 in FLSA liquidated damages, \$2,475.00 in NYLL liquidated damages, and \$2,000.00 in NYLL statutory damages).

The Proposed Judgment is Fair and Reasonable

As shown above, pursuant to the parties' proposed judgment, all Plaintiffs are receiving a substantial portion of their maximum possible recoverable damages. In light of the fact that Your Honor recommended the parties to stipulate as to the three factual issues that remained for trial, and that the parties did so by splitting the three issues right down the middle, and that these three stipulations, combined with the Court's ruling on Plaintiffs' summary judgment motion and other undisputed facts ultimately determined the Plaintiffs' recovery for purposes of the proposed judgment, the proposed judgment is certainly fair and reasonable as to all Plaintiffs. Thus, we respectfully request that the Court approve and So Order the parties' proposed judgment.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/Louis M. Leon
Louis M. Leon, Esq.
For the Firm

C: Counsel for Defendants (via ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>KEVIN GARCIA and PAULA MARTINEZ, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">-against-</p> <p>1800FIX.COM SATELLITES, LLC, 1800FIX.COM DISTRIBUTION, LLC, TONY BREA, LUIS BREA, and ABEL BREA, in their individual and professional capacities,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><u>PROPOSED JUDGMENT</u></p> <p style="text-align: center;">Docket No. 1:14-CV-2845(RMB)</p>
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It is hereby **ORDERED AND ADJUDGED**, on consent of all parties, that a judgment is hereby entered against Defendants 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$552,547.51 as follows:

A judgment be entered against 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$65,339.11 (this figure comprised of \$22,284.90 in unpaid overtime under the New York Labor Law (“NYLL”), \$14,981.56 in Fair Labor Standards Act (“FLSA”) liquidated damages, \$19,901.81 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$5,670.84 in prejudgment interest on NYLL claims), in favor of Plaintiff Kevin Garcia.

A judgment be entered against 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$67,330.81 (this figure comprised of \$24,611.18 in unpaid overtime under the NYLL, \$12,582.68 in FLSA liquidated damages,

\$18,708.31 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$8,928.64 in prejudgment interest on NYLL claims), in favor of Plaintiff Paula Martinez.

A judgment be entered against 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$81,950.49 (this figure comprised of \$27,792.71 in unpaid overtime under the NYLL, \$3,713.05 in FLSA liquidated damages, \$16,123.09 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$22,288.14 in prejudgment interest on NYLL claims), in favor of opt-in Plaintiff Henry Castillo

A judgment be entered against 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$98,052.90 (this figure comprised of \$34,452.00 in unpaid overtime under the NYLL, \$14,025.00 in FLSA liquidated damages, \$30,987.00 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$16,088.90 in prejudgment interest on NYLL claims), in favor of opt-in Plaintiff Ariel Santana.

A judgment be entered against 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$50,335.00 (this figure comprised of \$19,998.00 in unpaid overtime under the NYLL, \$12,647.25 in NYLL liquidated damages, \$2,500.00 in NYLL statutory damages, and \$15,190.35 in prejudgment interest on NYLL claims), in favor of opt-in Plaintiff Georgina Martinez.

A judgment be entered against 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$9,425.00 (this figure comprised of \$2,475.00 in unpaid overtime under the NYLL, \$2,475.00 in FLSA liquidated damages, \$2,475.00 in NYLL liquidated damages, and \$2,000.00 in NYLL statutory damages), in favor of opt-in Plaintiff Vinny Mercedes.

A judgment be entered against Defendants 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC, jointly and severally, in the amount of \$180,144.20 (this figure comprised of \$176,292.88 in attorneys' fees, and \$3,821.32 in costs and expenses), in favor of all Plaintiffs;

It is further **ORDERED and ADJUDGED** that that any amount of this judgment attributable to money awarded under the NYLL that remains unpaid upon the expiration of ninety days following the issuance of this judgment, or ninety days after expiration of the time to file an appeal and no appeal therefrom is then pending, whichever is later, including fees and interest, shall automatically increase by fifteen percent pursuant to NYLL § 663(4);

It is further **ORDERED AND ADJUDGED** that Defendants must pay any post-judgment interest, pursuant to the provisions of 28 U.S.C. § 1961, on the full judgment amount from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors, of the Federal Reserve System, for the calendar week preceding the date of judgment until the Defendants 1800Fix.com Satellites, LLC and 1800Fix.com Distribution, LLC comply with the full judgment amount; and

It is further **ORDERED AND ADJUDGED** that that this case is closed.

Dated: New York, New York
June __, 2016

By:

Hon. Richard Berman
United States District Judge