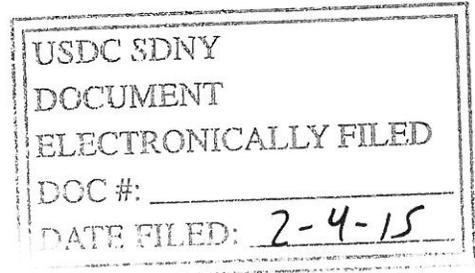


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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JUAN ALMENDRAS; DARIO ALTAMIRANDA;  
ROGELIO VERA; and GILBERTO OLIVEIRA, on  
behalf of themselves and all others similarly situated,

*Plaintiffs,*

*-against-*

ATELIER MÉRIGUET-CARRÈRE; ATELIER  
PREMIERE, INC. A/K/A PREMIERE PAINTING CO.,  
INC. A/K/A PREMIERE GENERAL PAINTING CO.,  
INC. A/K/A PREMIERE CUSTOM & DECORATIVE  
PAINTING; ANTOINE COURTOIS; and SAUL  
SOARES DE JESUS,

*Defendants.*

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13 CV 8815 (PAC)

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT,  
FINAL CERTIFICATION OF THE  
SETTLEMENT CLASS, AND  
APPROVAL OF THE FLSA  
SETTLEMENT**

HONORABLE PAUL A. CROTTY, United States District Judge:

WHEREAS, Named Plaintiffs Juan Almendras, Dario Altamiranda, Rogelio Vera, and Gilberto Oliveira (the "Named Plaintiffs") are painters who formerly provided painting services for Defendant Atelier Premiere, Inc. ("Premiere");

WHEREAS, on December 12, 2013, the Named Plaintiffs filed this lawsuit in the United States District Court for the Southern District of New York, bringing a collective action claim under the Fair Labor Standards Act ("FLSA") and three class action claims, pursuant to Fed. R. Civ. P. 23, under the New York Labor Law ("NYLL");

WHEREAS, on behalf of themselves and others similarly situated (collectively the "Plaintiffs"), the Named Plaintiffs alleged that Premiere, defendant Atelier Mériquet-Carrère, defendant Antoine Courtois, and defendant Saul Soares de Jesus (collectively the "Defendants") violated the FLSA and the NYLL by improperly classifying Plaintiffs as independent contractors, failing to pay them overtime compensation to which they were entitled, taking

unlawful deductions from their pay, and failing to provide paystubs and other pay-related notices;

WHEREAS, Plaintiffs sought unpaid wages, penalties, liquidated damages, and attorneys' fees and costs;

WHEREAS, after exchanging informal discovery to enable Plaintiffs to calculate damages and undertaking extensive and vigorous negotiations, the parties reached a settlement totaling \$540,000;

WHEREAS, the parties reached this settlement after two formal mediation sessions and numerous telephone conferences supervised by an experienced employment law mediator, Dina Jansenson;

WHEREAS, after months of negotiations, the parties memorialized the terms of this settlement in a formal agreement (the "Settlement Agreement");

WHEREAS, on November 17, 2014 this Court entered an Order preliminarily approving the settlement, conditionally certifying the settlement class, approving Court-supervised notice to members of the FLSA collective action, appointing Emery Celli Brinckerhoff & Abady LLP and The Legal Aid Society (together, "Class Counsel") counsel for the class, appointing RG/2 as the Settlement Claims Administrator, and directing that settlement notices proposed by the parties be mailed to members of the settlement class ("Class Members");

WHEREAS, on December 5, 2014, RG/2 mailed the Court-approved notice documents—in English, Spanish, and Portuguese—to all 86 Class Members, and these documents notified the Class Members of their rights under the settlement, including the right to opt out or object to the Rule 23 settlement, and of Class Counsel's intention to seek \$150,000 from the settlement fund for attorneys' fees and costs and a total of \$24,000 in service awards for the Named Plaintiffs

and for certain individuals who opted into the FLSA collective action prior to the parties' settlement negotiations (the "Early Opt-In Plaintiffs");

WHEREAS, no Class Members objected to the settlement or opted out;

WHEREAS, on January 29, 2015, Plaintiffs filed a Motion for Certification of the Settlement Class, Final Approval of the Class Action Settlement, and Approval of the FLSA Settlement ("Motion for Final Approval");

WHEREAS, that motion also sought approval of Class Counsel's attorneys' fees and expenses in the amount of \$150,000, as well as service awards for the Named Plaintiffs and Early Opt-In Plaintiffs;

WHEREAS, the Court held a fairness hearing on February 4, 2015;

WHEREAS, no Class Member objected to the settlement at the hearing;

WHEREAS, having considered the papers submitted in support of Plaintiffs' motion, the oral argument presented at the February 4, 2015 fairness hearing, and the complete record in this matter, for the reasons set forth therein and stated on the record at the February 4, 2015 fairness hearing, and for good cause shown,

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

1. The Court certifies the following class under Fed. R. Civ. P. 23, for settlement purposes:

All persons who provided painting services to Premiere at any time between December 12, 2007 through and including April 10, 2014, where such services were performed pursuant to an arrangement entered into in New York, and who allegedly worked more than 40 hours in at least one workweek, and/or allegedly had the costs of workers' compensation or liability insurance deducted from their compensation and/or were allegedly required to pay such costs out of pocket, and/or allegedly did not receive wage statements and/or time-of-hire notices as required by Section 195 of the New York Labor Law, and to whom RG/2 attempted to mail the Court-approved settlement notice documents.

2. Plaintiffs meet the requirements for class certification under Fed. R. Civ. P. 23(a). There are approximately 86 class members, satisfying the numerosity requirement of Rule 23(a)(1). There are common issues of fact and law—including whether Defendants misclassified them as independent contractors, failed to pay them overtime wages in violation of state wage and hour laws, took unlawful deductions from their pay in violation of state wage and hour laws, and failed to provide them with statutorily required notices concerning their pay—satisfying the commonality requirement of Rule 23(a)(2). Plaintiffs' claims arise from the same factual and legal circumstances that form the basis of the Class Members' claims, satisfying the typicality requirement of Rule 23(a)(3). There is no evidence that the lead Plaintiffs have any interests antagonistic to the other class members and Plaintiffs' counsel is qualified and experienced, satisfying the adequacy of representation requirement of Rule 23(a)(4).
3. Plaintiffs meet the requirements for class certification under Fed. R. Civ. P. 23(b)(3). Plaintiffs' common factual allegations and common legal theory—that Defendants violated federal and state wage and hour laws by misclassifying Plaintiffs, failing to provide proper overtime compensation, taking unlawful deductions from Plaintiffs' wages, and failing to provide statutorily required pay-related notices—predominate over any factual or legal variations among class members. Class adjudication is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually.
4. The Court grants final approval to the settlement as set forth in the Settlement Agreement, ECF No. 49-1. In accordance with the Court's Order of October 22, 2014,

ECF No. 50, Appendix A to the Settlement Agreement will remain under seal. Rule 23(e) requires court approval for a class action settlement to ensure that it is procedurally and substantively fair, reasonable, and adequate. The settlement is procedurally fair since it was reached after the parties had conducted a thorough investigation and evaluated the claims and defences, and after arm's-length negotiations between the parties and their counsel facilitated by a neutral mediator. The settlement is substantively fair since the *Grinnell* factors are satisfied:

- Litigation through trial would be complex, expensive, and extensive.
- After a full disclosure of the allocation formula and its intended application to each potential class member, the class's reaction to the settlement was positive, with no member of the class opting out, or objecting;
- The parties have completed sufficient discovery to weigh the strengths and weaknesses of their claims and recommend settlement.
- Plaintiffs face numerous risks of establishing both liability and damages, including overcoming Defendants' merits defenses on misclassification, proving willfulness in order to obtain all of the liquidated damages sought, and overcoming Defendants' arguments concerning the proper calculation of hours worked.
- Plaintiffs face risks maintaining class certification through the trial as Defendants would likely rely heavily on any factual differences between the class.
- Defendants' ability to withstand a greater judgment was in doubt at the time the settlement was negotiated because each of the Defendants was either financially unstable, judgment proof, or situated abroad.

- The settlement amount in light of the best possible recovery and the attendant risks of litigation weighs in favor of approval.
5. The Court hereby approves the FLSA settlement, which was reached to resolve contested litigation raising bona fide disputes.
  6. The Court finds that the notices fairly and adequately advised Class Members of the terms of the settlement, as well as their right to opt out of or to object to the settlement, and to appear at the fairness hearing conducted on February 4, 2015.
  7. On November 17, 2014, pursuant to Fed. R. Civ. P. 23(g), the Court appointed Emery Celli Brinckerhoff & Abady LLP and the Legal Aid Society as Class Counsel.
  8. The Court grants Plaintiffs' motion for attorneys' fees and awards Class Counsel \$150,000, which is 27.78% of the settlement fund. The motion is unopposed: there are no objections. The Court finds that the attorneys' fees are fair, reasonable, and appropriate.
  9. The Court finds that the requested service awards of (a) \$5,000 each to Named Plaintiffs Juan Almendras, Dario Altamiranda, Rogelio Vera, and Gilberto Oliveira, and (b) \$1,000 each to FLSA opt-in plaintiffs Eduardo Santos, Edival G. Lopes, Javier Altamiranda, and Leoncio Cortez, are reasonable in the circumstances. These amounts shall be paid from the settlement fund.
  10. If this Order is not appealed, the "Effective Date" of the settlement shall be five days from expiration of the time to appeal this Order. If this Order is appealed, the "Effective Date" of the settlement shall be five days after all appeals are finally resolved.
  11. This Order shall constitute a judgment for purposes of Fed. R. Civ. P. 58.
  12. Within ten days after the Effective Date or on February 15, 2015, whichever is later, RG/2 shall distribute the funds in the settlement account by making the following

payments in the order below:

- A. Paying Class Counsel \$150,000;
- B. Paying service awards of \$5,000 each to Named Plaintiffs Juan Almendras, Dario Altamiranda, Rogelio Vera, and Gilberto Oliveira, and \$1,000 each to FLSA opt-in plaintiffs Eduardo Santos, Edival G. Lopes, Javier Altamiranda, and Leoncio Cortez;
- C. Paying the remainder of the fund to class members in accordance with the Settlement Agreement.

13. 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.

14. Upon the Effective Date, this litigation shall be dismissed with prejudice.

Dated: New York, New York  
February 4, 2015

SO ORDERED



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PAUL A. CROTTY  
United States District Judge