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United States District Court,
E.D. New York.

Helen EBBERT, Pamela Edwards, Isabella Minneci, Wendy Muro, Frances Kamerer, Lori Conklin, and all others similarly situated, Plaintiffs,
v.
NASSAU COUNTY, Nassau County Police Department, Nassau County Civil Service Commission, Thomas R. Suozzi, in his official capacity, Defendants.

No. CV 05–5445(AKT). | Dec. 22, 2011.

**Attorneys and Law Firms**

Herbert Eisenberg, Janice Goodman, Law Offices of Janice Goodman, New York, NY, for Plaintiffs.

Carl S. Sandel, Barbara E. Van Riper, Jennean R. Rogers, Lauren Seides Chartan, Mineola, NY, for Defendants.

**Opinion**

**FINAL ORDER AND JUDGMENT GRANTING PLAINTIFFS' MOTION FOR CERTIFICATION OF SETTLEMENT CLASS, FINAL APPROVAL OF A CLASS ACTION SETTLEMENT, AND AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS**

A. KATHLEEN TOMLINSON, United States Magistrate Judge.

***1** Plaintiffs, as individuals and representatives of a class, commenced this action in 2005 against Defendants Nassau County, the Nassau County Police Department, and the Nassau County Civil Service Commission alleging violations of the Equal Pay Act, 29 U.S.C. §§ 206(d), *et seq.* and the New York State Equal Pay Act, N.Y. Lab. Law §§ 194, *et seq.* Plaintiffs also sued Defendant Thomas R. Suozzi, in his official capacity as County Executive, based upon alleged gender discrimination in violation of 42 U.S.C. § 1983. After the close of discovery and after Judge Block's decision denying summary judgment on most of the claims asserted, the parties entered into arm's length settlement discussions, under the supervision of this Court, and ultimately reached a Settlement Agreement.

At a conference held on June 15, 2011 [DE 150], this Court preliminarily approved the entire Amended Stipulation of Settlement and Release as fair, adequate and reasonable. The Court also scheduled a Final Fairness Hearing for August 30, 2011 on the question of whether the proposed Settlement should be finally approved as fair, adequate and reasonable as to the Settlement Class Members. On June 21, 2011, the Court approved and "so ordered" the form and content of the "Notice of a Proposed Class Action Settlement" and Claim Form materials, directed the mailing of these materials, and certified the Settlement Class. *See* DE 153.

Plaintiffs now move for: (1) final certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure; and (2) final approval of the Settlement, including the award of (a) service awards for the six named Plaintiffs, all of whom significantly contributed to the success of this action; and (b) attorneys' fees and expenses as detailed below. For the reasons that follow, the motion is GRANTED in its entirety.

## I. *FACTUAL BACKGROUND*

Plaintiffs Helen Ebbert, Pamela Edwards, Isabella Minneci and Wendy Muro are four women who are or were employed by Nassau County as Police Communication Officers ("PCOs"). Two of the other named Plaintiffs, Frances Kamerer and Lori Conklin, were initially employed as PCOs. Kamerer and Conklin were promoted to the position of Police Communication Officer Supervisors ("PCOSs"). Over 90% of the PCOs and PCOSs in Nassau County are female.

In bringing this suit, the Plaintiffs alleged that the Defendants discriminated against them and the class they represent by paying them wages lower than the wages paid to men for the performance of work that is substantially equal in skill, effort and responsibility. Specifically, the Plaintiffs compare their salaries to those of the work force of approximately 32 Fire Communication Technicians ("FCTs") and Fire Communication Technician Supervisors ("FCTSs"), all of

whom are male. According to the Plaintiffs, no woman has ever been employed in the position of FCT or FCTS.

The pay scales for all four positions are determined by the Nassau County Civil Service Commission's civil service grade ranking system. At all times relevant to this litigation, FCTs and FCTSs were ranked at salary grades 10 and 12, respectively. Prior to October 2001, PCOs were ranked at salary grade 7 and PCOSs at grade 10. As of October 2001, PCOs were elevated to grade 9 and PCOSs to grade 11. The PCOs and PCOSs, however, did not receive "vertical upgrades" to maintain them at their pre-elevation steps. On May 25, 2005, the Nassau County Legislature elevated the PCOs and PCOSs to grades 10 and 12, thereby placing them in equal *grade* with the FCTs and FCTSs, but not in equal *step.*

***2** The Plaintiffs claim that they had been paid between $1,500 and $10,000 per year less than the FCTs and FCTSs of equal seniority, and that they continued to be paid less because they were not given vertical upgrades in October 2001. Notwithstanding the current parity in pay grade, the Defendants maintain that the positions of PCO and PCOS are not substantially similar to those of FCT and FCTS. Moreover, the Defendants assert that the Plaintiffs are not entitled to vertical upgrades because under the collective bargaining agreement between Nassau County and the Civil Service Employees Association, Inc., "[i]f an employee is promoted or otherwise moves to a higher grade ... the employee will move to the step on the higher grade which provides a salary no less than the employee's original salary plus $1,000." Affidavit of Karl Kampe, Executive Director of the Nassau County Civil Service Commission, in opposition to Plaintiffs' Motion to Proceed as a Collective Action and for Class Certification, annexed to Defendants' Memorandum of Law in Opposition [DE 23], ¶ 6. The Defendants have further argued during the litigation that the claims asserted by the Plaintiffs are *res judicata,* that the Defendants have partial immunity and that the claims are barred by the statute of limitations.

## II. *PROCEDURAL HISTORY*

Plaintiffs Ebbert, Edwards, Minneci, Kamerer, Edwards, and Muro represented by Eisenberg & Schnell, LLP and the Law Offices of Janice Goodman (hereafter "Class Counsel"), commenced this class action on November 18, 2005. *See* DE 1. The parties proceeded through contentious phases of the litigation, including a lengthy class certification and merits discovery process, depositions of the six named Plaintiffs and nine other witnesses, substantial motion practice, and extensive as well as problematic expert discovery. The action as a whole was vigorously contested.

Early on in the discovery process, the parties agreed to bifurcate this matter and to handle the liability and damages phases separately. The motion to bifurcate was filed before Judge Block on July 20, 2006 [DE 19] and was granted on August 3, 2006 [DE 20]. As discovery was progressing, the parties became engaged in a dispute concerning Plaintiffs' request for certain city and state public service examinations to which the Defendants objected. New York State Civil Service Commissioner Wall moved to quash a subpoena served upon the agency by Plaintiffs for materials and for a deposition of Commissioner Wall. Counsel for the Commissioner also moved for a protective order [DE 28] which the Plaintiffs opposed. In a March 2, 2007 Memorandum and Order, this Court granted the motion, in part, by precluding the deposition of Commissioner Wall, but otherwise denying the protective order as to production of the civil service examinations and related materials. *See* DE 32.

Subsequently, Plaintiffs formally moved to amend the complaint and the Defendants opposed. That motion was granted by this Court. *See* May 24, 2007 Memorandum and Order, DE 45. Plaintiffs filed their Amended Complaint, adding Lori Conklin as a plaintiff, on May 29, 2007. *See* DE 46.

***3** In the interim, Plaintiffs' counsel had also filed on November 21, 2006 Plaintiffs' motion to proceed as a collective action under the New York Equal Pay Act and to proceed as a class action for violations of 42 U.S.C. § 1983 and state law, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. *See* DE 22. The Defendants opposed the motion [DE 23]. Judge Block heard oral argument on August 9, 2007 [DE 68] and thereafter entered a Memorandum & Order on August 13, 2007 granting the motion for class certification [DE 67]. In that decision, Judge Block ruled as follows:

> [a]ccordingly, Plaintiffs' motion to certify their claims under the New York State Equal Pay Act and § 1983 as a class action pursuant to Rules 23(a) and 23(b)(2) is also granted. With respect to the claims under the New York State Equal Pay Act, the class shall be comprised of all women employed by the County as PCOs and/or PCOSs on or after November 18, 1999, six years prior to the commencement of this action. *See Patrowich v. Chemical Bank,* 98 A.D.2d 318, 470 N.Y.S.2d 599, 604

(1st Dep't 1984) (applying six-year statute of limitations to New York State Equal Pay Act claim). With respect to the claims under 42 U.S.C. § 1983, the class shall be similarly defined except for the time frame: The class shall be comprised of all women employed by the County as PCOs and/or PCOSs on or after November 18, 2002, three years prior to the commencement of this action. *See Patterson v. County of Oneida,* 375 F.3d 206, 225 (2d Cir.2004) ("[T]he statute of limitations applicable to claims brought under § 1983 in New York is three years.").

DE 67 at 9. Judge Block also certified the class of opt-ins pursuant to 29 U.S.C. §§ 216(b), *et seq., id.* at 6.

Expert discovery spawned another round of issues for which the Court was ultimately called upon to intervene. On July 6, 2007, the Court issued an Order [DE 61] directing that the inspection of the work site by both sides' experts was to be conducted on July 13, 2007. In addition, Plaintiffs notified the Court that they intended to make a *Dauber* t motion and the Court "so-ordered" the briefing schedule agreed upon by all counsel. *See* Electronic Order of August 23, 2007. Plaintiffs moved to preclude the testimony of Defendants' expert and to have the expert's report and rebuttal stricken. *See* DE 75. Defendants opposed the motion [DE 76] and later filed their own *Daubert* motion challenging the qualifications and methodology of Plaintiffs' expert and seeking to preclude her testimony. *See* DE 91. In a September 26, 2008 Memorandum and Order [DE 103], this Court granted the Plaintiffs' motion, in part, striking certain inadmissible portions of the Defendants' expert report and also striking the newly added portions of the rebuttal report that should have been disclosed in the initial report. Three days later, on September 29, 2008, the Court issued a second Memorandum and Order [DE 104], denying the Defendants' motion to strike with regard to the qualifications of Plaintiffs' expert, but granting the motion to strike certain inadmissible portions of the expert's report. Both experts were directed to amend their reports to conform with the directives given in those two decisions.

***4** The Defendants filed a motion for summary judgment on July 25, 2008, seeking to have the complaint dismissed in its entirety. *See* DE 100. Defendants argued, among other things, that the action was precluded by *stare decisis* and that the Plaintiffs' Equal Pay Act claims failed as a matter of law. The Plaintiffs opposed the motion and on April 3, 2009, Judge Block issued a Memorandum and Order [DE 105] denying the motion as to the federal and state equal pay act claims, but granting it to the extent of dismissing the § 1983 claim and the action itself as against Nassau County Executive Suozzi.

In June 2009, Plaintiffs moved to have Defendants' expert held in contempt for his failure to comply with the Court's Orders concerning amendment of the expert report [DE 106]. Defendants opposed and counsel were permitted supplemental submissions to deal with certain issues before the Court. *See* DE 108, 109, 110, 111, 112, 113. Upon review, the Court concluded that the so-called revisions in Defendants' Revised Expert Report and Revised Rebuttal Report failed to comply in large part with the Court's prior Order. Twelve days after Plaintiffs filed the motion for contempt, Defendants provided the Plaintiffs with further revised versions of the expert's reports. The Court found that some substantial revisions had been made, but that the reports were still not in compliance with the previous Orders. *See* DE 119. Defendants were given three weeks to achieve a final attempt at compliance or be precluded from using the expert reports and from having the expert testify. In addition, the Court imposed a sanction in the form of costs incurred by the Plaintiffs for the second round of motion practice and directed Plaintiffs' counsel to submit a fee application. *Id.*

Thereafter, in mid-June, 2010, Plaintiffs' requested an extension of time within which to file their fee application [DE 120] and Defendants requested an extension of time within which to exchange stipulated facts [DE 121] and other materials being prepared for the proposed Joint Pre–Trial Order. Both applications were granted in contemplation of the settlement conference then set for June 28, 2010.

## III. *THE SETTLEMENT*

At a status conference on May 20, 2010, after discussion with counsel, the Court set forth the tasks to be completed to bring the pre-trial phase of the case to a conclusion and the deadlines for doing so. *See* DE 118. Counsel jointly advised the Court at that time that they wished to schedule a settlement conference and, on June 28, 2010, the parties, along with the Court, began the first in a series of extensive settlement negotiations. *See* Electronic Order of June 17, 2010. The submission of the Joint Pre–Trial Order and the scheduling of the Pre–Trial Conference were held in abeyance pending the ongoing settlement discussions. *See* DE 122. Over the course of the next six months, in addition to their individual negotiations,

counsel met with the Court fourteen times in person and by telephone for continuing settlement discussions. During those discussions, it became clear that an outside expert would be needed to analyze the payroll data produced in discovery. The Court ordered that an expert acceptable to both sides be retained to review the voluminous payroll materials involved and to prepare appropriate calculations to determine the loss each class member had sustained—taking into account, among other things, starting salaries, grades and steps, dates of changes in position, name changes effected by some Plaintiffs through marriage, retirement of certain Plaintiffs, etc.

***5** The parties executed a settlement agreement on March 7, 2011 (hereafter, the "Settlement"), subject to approval by the Nassau County Legislature and the Nassau County Executive. *See* June 9, 2011 Affirmation of Janice Goodman, Esq. [DE 148–2] ("Goodman Aff. I"), Ex. A. On June 9, 2011, the Plaintiffs filed a Motion for Preliminary Approval of Class Settlement seeking an order (1) granting preliminary approval of the Settlement; (2) approving the Proposed Notice of Settlement of the Class Action Lawsuit to be mailed to all class members in the form attached; and (3) setting a date for a Fairness Hearing no earlier than seventy (70) calendar days from the date of the grant of Preliminary Approval of the Settlement. *See* DE 148. Judge Block referred the motion to the undersigned on June 10, 2011 to hold a fairness hearing with proposed class members and to issue a Report and Recommendation as to the proposed class settlement. *See* Electronic Order of June 10, 2011. Several days later, the parties filed a Consent to Jurisdiction by a United States Magistrate Judge [DE 149, 151] which Judge Block then executed and which directed the reassignment of the case [DE 154].

During a June 15, 2011 conference with counsel, the Court was advised that the Nassau County Legislature had approved the terms of the Settlement. *See* DE 150. This Court then granted preliminary approval of the Settlement during the conference and issued an order to that effect on June 15, 2011. *Id.* In that approval, the Court certified a "Settlement Class" defined as:

> All women employed by the County as PCOs and/or PCOSs on or after November 18, 1999.

Goodman Aff. I, Ex. A, Sec. 1E. The Court also certified the class of Opt–Ins pursuant to 29 U.S.C. §§ 216(b), *et seq*. In addition, the Court confirmed, among other things, (1) the total settlement amount to Class Members; (2) the designation of a Settlement Administrator and a cap on fees for the Administrator's services; (3) Service Award payments to each of the named Plaintiffs; and (4) attorneys' fees to Plaintiffs' counsel *Id.* at Sec. 3.1–3.3. The Court found that the proposed Settlement, as set forth in the Parties' Stipulation, appeared to be thorough, complete, satisfactory, fair and reasonable, and in the best interests of the Class. DE 150. The Court also approved the proposed class notice and proposed manner of delivering that notice to the class. Having made those findings, the Court set the Fairness Hearing down for August 30, 2011 at 11 a.m. *Id.*

On June 20, 2011, the Plaintiffs filed a Motion for Leave to File Notice of a Proposed Class Action Settlement outlining the terms of the Settlement and further providing an Opt–Out Form as well as an Objection to Settlement and Request to be Heard Form [DE 152]. The Court granted the motion on June 21, 2011 [DE 153]. Notice to the Class in the form approved by the Court was mailed on July 7, 2011 to the addresses provided by Defendant Nassau County. *See* August 23, 2011 Affirmation of Janice Goodman, Esq., ¶ 25 [DE 160–1] ("Goodman Aff. II").

***6** The Plaintiffs filed an Amended Stipulation of Settlement and Release [DE 159] on August 16, 2011, reflecting some minor changes to which the parties had agreed. Under the terms of the agreement, Class Members had the opportunity to inform the Court of any objections to the Settlement or to opt-out of the Settlement by August 23, 2011. Goodman Aff. II, ¶ 26. As of the filing of Plaintiffs' Motion for Final Approval of the Amended Stipulation of Settlement and Release [DE 160] on August 23, 2011, no one had filed any objections and no opt-outs had been received. *Id.* Class Counsel had also filed their respective affirmations in support of an award of attorneys' fees. *See* DE 160–1, 161.

## IV. *THE FAIRNESS HEARING*

The Court held a Fairness Hearing regarding the Settlement on August 30, 2011. At the Fairness Hearing, the parties requested that the Court: (1) approve the Settlement and Agreement as fair, reasonable, adequate and binding on all Class Members who have not timely opted out of the Settlement; (2) order Defendants to distribute the settlement amounts as provided in Point 3.1 of the Settlement Agreement (3) order the Defendants to pay the attorneys' fees and costs to Class Counsel in the

amounts set forth in the Settlement Agreement; (4) order the dismissal of the claims of all Class Members who did not opt-out; and (5) retain jurisdiction for two years from the date of entry of the Final Order approving the settlement to preside over implementation of the Settlement provisions. *See* Amended Stipulation of Settlement and Release, Section 6E(a) [DE 159].

Counsel for the Plaintiffs and Defendants were present at the Fairness Hearing, as were at least four of the named Plaintiffs. Plaintiffs' counsel noted that there are approximately 230–250 Class Members. *See* Transcript of the August 30, 2011 Fairness Hearing[1] [DE 162] at 5. A final number had not yet been confirmed because people had emerged of whom counsel were not previously aware. Plaintiffs' attorney, Janice Goodman, stated that the amounts paid in settlement range from $2,000 per Class Member to as high as $80,000 for some Class Members depending on step and seniority. Hr'g Tr. at 5.

[1] Subsequent references to the record of the Fairness Hearing are designated "Hr'g Tr. at ____."

Under the Settlement, the parties have agreed that Nassau County will pay a gross Settlement amount of seven million ($7,000,000) dollars, exclusive of attorneys' fees. The fund is to be distributed as follows:

> A. Each Class Member will be made whole by receiving a back pay settlement, calculated by an expert, representing the difference between what she would have earned has she been paid the same as the similarly situated FCT/FCTS, and what she earned as a PCO/PCOS for the period running from November 18, 1999 through June 30, 2011, or her date of termination, whichever occurred first. Goodman Aff. II, Ex. A, ¶ 3. 1(A).
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> B. Each named Plaintiff will receive a Service Award of $20,000 for initiating and prosecuting this litigation. *Id.,* Ex. A, ¶ 3. 1(B)(b); Hr'g Tr. at 5.
>
> ***7** C. The sum of $50,000 shall be set aside for payment of the Settlement Claims Administrator appointed by the Court to complete the final calculations and, if necessary, to resolve any disputes concerning actual damages for those Class Members with successful challenges to the calculations. Ex. A, ¶ 3.1(B)(c) and (d). The Settlement Administrator shall notify the County of her determination of any challenge. Goodman Aff. II, Ex. A, ¶ 3.6(c). At the conclusion of the matter, the Settlement Administrator shall provide the Court with a full statement of work performed and payments billed and made. *Id.,* Ex. A, ¶ 3.3(d); Hr'g Tr. at 6.
>
> D. Any sums remaining from the Items B and C above as well as any uncashed Settlement Check shall be divided equally as *cy pres* awards to the two designated Charities set forth in the Settlement Agreement. Goodman Aff. II, Ex. A, ¶ 3.1(B)(e); Hr'g Tr. at 5–6.

The Settlement also provides that any PCO or PCOS not presently in her proper grade 10 step, based on years of service, shall be upgraded immediately. Nassau County also commits to use its best efforts to maintain equality between the PCO/PCOS and the FCT/FCTS in the future. Goodman Aff. II, Ex. A, ¶ 3.4(a) and (b). Likewise, the agreement provides that the Settlement Funds shall be distributed within thirty (30) days after entry of the Court's Order of Final Approval. *Id.* ¶ 3. 1(B); Hr'g Tr. at 18. The parties further agreed that the Court will retain jurisdiction over the parties and this action for two years from the effective date of the Agreement for the purpose of entering any order or judgment that may be necessary to implement and enforce the relief provided. Ex. A, ¶ 6; Hr'g Tr. at 17–18.

At the Fairness Hearing, no objectors appeared. Counsel reported that no objections had been filed. Hr'g Tr. at 7.

## IV. *DISCUSSION*

For the reasons set forth below, the Court grants Plaintiffs' motion for final approval of the Settlement and for Plaintiffs' requested attorneys' fees and expenses and Service Awards.

### A. The Applicable Standard

A court may approve a class settlement, pursuant to the provisions of Rule 23(e), only after holding a hearing and finding that the settlement is "fair, reasonable, and adequate." Fed.R.Civ.P. 23(c)(2). To determine the fairness of a settlement, a District Court must examine" the negotiating process leading up to the settlement as well as the settlement's substantive terms." *D'Amato v. Deutsche Bank,* 236 F.3d 78, 85 (2d Cir.2001); *Dupler v. Costco Wholesale Corp.,* 705 F.Supp.2d 231, 238

(E.D.N.Y.2010). The Court must therefore "consider both the procedural fairness of the settlement negotiations, as well as the substantive fairness of the settlement itself." *Dupler,* 705 F.Supp.2d at 238.

"With respect to procedural fairness, we have stated that a District Court reviewing a proposed settlement 'must pay close attention to the negotiating process, to ensure that the settlement resulted from arm's length negotiations and that plaintiffs' counsel ... possessed the [necessary] experience and ability, and have engaged in the discovery necessary to effective representation of the class's interests.' " *McReynolds v. Richards–Cantave,* 588 F.3d 790, 804 (2d Cir.2009) (quoting *D'Amato v. Deutsche Bank,* 236 F.3d at 85) (alterations in original). 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." *Manual for Complex Litigation, Third,* § 30.42 (1995) (quoted in *Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96, 116 (2d Cir.2005)). Moreover, there is a "strong judicial policy in favor of settlements, particularly in the class action context." *In re Paine Webber Ltd. P'ships Litig.,* 147 F.3d 132, 138 (2d Cir.1998).

***8** In reviewing the substantive fairness of a settlement, the Court must consider the criteria set forth in *Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir.1974), often referred to as the *"Grinnell* factors." *See, e.g., Wal–Mart Stores, Inc.,* 396 F.3d at 117; *Velez v. Novartis Pharm. Corp.,* No. 04 Civ. 09194, 2010 WL 4877852, at *12 (S.D.N.Y. Nov. 30, 2010); *Dupler,* 705 F.Supp.2d at 238. These factors include: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage 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 defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell,* 495 F.2d at 463. In order to arrive at a fairness determination, the Court must give "comprehensive consideration to all relevant factors and yet the settlement hearing must not be turned into a trial or a rehearsal of the trial." *Id.* As noted in Grinnell, such a procedure "would emasculate the very purpose for which settlements are made." *Id.* At the same time, the Court must refrain from "any rubber stamp approval" and instead pursue an independent evaluation. *Id.* The Court now turns to the Settlement in the instant case with these factors in mind.

**B. Fairness Evaluation**

**1. Procedural Fairness**

Settlement discussions in this case did not begin until after the close of both fact and expert discovery, after the class had been certified, and after Judge Block's decision on defendants' summary judgment motion. In fact, the skeleton for the proposed Joint Pre–Trial Order was in place when the first settlement conference was scheduled. *See* Goodman Aff. II, ¶ 13. The settlement was reached after arm's length negotiations by counsel for both plaintiffs and defendants. Those negotiations were conducted under this Court's supervision; in fact, the Court met with counsel for the parties some 14 times, in person and by phone, facilitating this process. *See* DE 122, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142. The negotiations continued over six months. Goodman Aff. II, ¶ 14. Hence, the Settlement was reached after Plaintiffs had conducted a thorough investigation, evaluated the claims and engaged in extensive negotiations. The Plaintiffs also obtained, reviewed and analyzed thousands of pages of documents, including compensation and payroll records, human resources data and other materials. *Id.* ¶ 7. During discovery, counsel engaged in numerous discovery disputes which required Court intervention. *Id.,* ¶¶ 7–10.

***9** Plaintiffs' co-counsel, the law firm of Eisenberg & Schnell, LLP and the Law Offices of Janice Goodman, are experienced counsel who are well-known in employment law and employment discrimination litigation. Once an agreement in principle was reached, counsel exchanged several drafts to ensure that the precise wording was accurate and complete. The Court concludes, therefore, that the Settlement is procedurally fair and is entitled to a presumption of being fair, reasonable and adequate and not a product of collusion. *See Joel A. v. Giuliani,* 218 F.3d 132, 138–39 (2d Cir.2000); *Wal–Mart Stores,* 396 F.3d at 116; *Dupler,* 705 F.Supp.2d at 239.

**2. Substantive Fairness**

"Courts examine substantive fairness in light of the " 'strong judicial policy favoring settlements' of class

action suits." *Clark v. Ecolab Inc.,* No. 07 Civ. 8623, 2010 WL 1948198, at *4, (S.D.N.Y. May 11, 2010) (quoting *Wal–Mart Stores,* 396 F.3d at 116). This Settlement is substantively fair. The *Grinnell* factors which provide the analytical framework for evaluating substantive fairness of the class action settlement weigh in favor of final approval here.

***a. Complexity, Expense, and Likely Duration of the Litigation***

As an initial premise, class actions are generally complex. *Velez,* 2010 WL 4877852, at * 12. This case was on the brink of trial when negotiations commenced. All discovery had been completed which left the parties in an optimum position to calculate the risks attendant in continuing to trial vis-a-vis the reasonableness of this Settlement. *See* Pls.' Mem. of Law in Support of Their Motion for Approval of Class Settlement ("Pls.Mem."), annexed as Exhibit 2 to the Notice of Motion for Final Approval of Class Settlement [DE 160], at 10. Further litigation at trial would also require resolution of several complex issues since Plaintiffs bear the burden of demonstrating that the positions of the PCO/PCOS were substantially equal in terms of skill, effort and responsibility, to the FCT/FCTS. This process would require extensive testimony explaining the details of the four jobs being compared. *Id.* Preparing and putting on evidence to support plaintiffs' position would consume tremendous time and financial resources, including extensive expert testimony. *See id.*

It is also significant to note that this case was bifurcated at the request of the parties. Consequently, discovery on damages would not proceed unless and until liability was determined. Even assuming that Plaintiffs prevailed at trial, there would have been a further significant delay in ascertaining damages, thus delaying monetary relief to the class members if they were successful. Without this Settlement, there would likely be a lengthy appeals process that would further delay any payout to the Class Members, which is a further element the Court takes into account. *See Maley v. Del Global Techs. Corp.,* 186 F.Supp.2d 358, 362 (S.D.N.Y.2002). Settlement at this point results in a "substantial and tangible present recovery, without the attendant risk and delay of trial." *Id.* The Court finds, therefore, that the foregoing factor weighs in favor of the proposed Settlement.

***b. Reaction of the Class to the Settlement***

***10** "It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.... In fact, the lack of objections may well evidence the fairness of the [s]ettlement." *Id.* (citing *In re American Bank Note Holographics,* 127 F.Supp.2d 418, 425 (S.D.N.Y.2001). In this instance, no objections were filed to the Settlement, no one opted-out and no one appeared at the Fairness Hearing to voice any objections. This complete lack of objection indicates an overwhelmingly positive reaction from the class. *See, e.g., Velez,* 2010 WL 4877852 at * 13 (six requests for exclusion and no objections by any member among class of 5600 female sales force employees in gender discrimination action constitutes strong favorable reaction regarding settlement's fairness); *Dupler,* 705 F.Supp.2d at 239 ("such a small number of class members seeking exclusion or objecting [24 objections and 127 opt-outs of 11,800,514 class members] indicates an overwhelmingly positive response"); *Wal–Mart Stores,* 396 F.3d at 118 (where only 18 out of 5,000,000 class members objected, evidence established that the class was "overwhelmingly in favor" of the settlement).

***c. Stage of the Proceedings and the Amount of Discovery Completed***

Settlement is especially favored when "the litigation is at an 'advanced stage' and an 'extensive amount of discovery [has been] completed.' " *Velez,* 2010 WL 4877852 at * 13 (quoting *In re Marsh & McLennan Companies, Inc. Secs. Litig.,* No. 04 Civ. 8144, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009)) (alteration in original). "This factor relates to whether the plaintiffs had sufficient information on the merits of the case to enter into a settlement...." *Parker v. Time Warner Entm't Co., L.P.,* 631 F.Supp.2d 242, 259 (E.D.N.Y.2009); *Frank v. Eastman Kodak Co.,* 228 F.R.D. 174, 185 (W.D.N.Y.2005) (settlement at a late stage affords the court an opportunity to "intelligently make ... an appraisal of the Settlement") (internal quotations omitted). As described above, the parties here were on the brink of trial. Plaintiffs' counsel conducted an extensive investigation regarding the claims, including interviewing the Plaintiffs and other putative class members, taking nine depositions and defending depositions of the six named Plaintiffs and reviewing massive documentation. Goodman Aff. II, ¶ 7. All fact and expert discovery had been completed, class certification had been granted, and a decision on summary judgment had been rendered. The

parties had begun preparing the proposed Joint Pre–Trial Order when Court supervised settlement discussions began in earnest. *Id.,* ¶ 13. Class Counsel, along with the named Plaintiffs, were well able to assess their position, having had sufficient time to realistically evaluate the strengths and weaknesses of their claims and the fairness of the proposed Settlement. *See In re Marsh & McClennan,* 2009 WL 5178546, at *20. Based on the foregoing information, the Plaintiffs here had sufficient information to enter into the agreement and this factor weighs in favor of approving the Settlement.

***d. Risks of Establishing Liability***

***11** "Litigation inherently involves risks." *In re Painewebber Ltd. P'ships Litig.,* 171 F.R.D. 104, 126 (S.D.N.Y.1997). One of the purposes of a settlement is to avoid the uncertainty of a trial on the merits. *Clark,* 2010 WL 1948198, at *6; *Velez,* 2010 WL 4877852, at *14. The trial in the current action would have been lengthy and complicated since Plaintiffs bear the burden of establishing that the positions of the PCO/PCOS are substantially equal in terms of skill, effort and responsibility to the FCT/FCTS. The pay scales for these positions are determined by the Nassau County Civil Service Commission's grade ranking system and Defendants maintained that the positions are not substantially similar. Defendants further argued that the Plaintiffs were not entitled to vertical upgrades based upon certain provisions of the collective bargaining agreement between Nassau County and the Civil Service Employees Association, Inc. *See* August 13, 2007 Memorandum & Order of Judge Block, at 3. A trial would have required the Plaintiffs to put on extensive testimony, both fact and expert, explaining the details of these positions. In the absence of a settlement, the Plaintiffs could face a long road to an ultimate determination, including trial, post-trial motions, the adjudication of Class Members' individual claims and the inevitable appeal. The fourth *Grinnell* factor therefore weighs in favor of final approval because the Settlement "resolves this significant and cumulative uncertainty in a manner favorable for all." *Velez,* 2010 WL 4877852, at *14.

***e. Risks of Establishing Damages***

Under the Settlement, each of the Class Members will receive an award that is indisputably reasonable given the risks and time attendant upon a trial and appeals process. "The determination of a reasonable settlement is not susceptible of a mathematical calculation yielding a particular sum, but turns on whether the settlement falls within a range of reasonableness. This range of reasonableness recognizes the uncertainties ... in any particular case...." *In re MetLife Demutualilzation Litig.,* 689 F.Supp.2d 297, 340 (E.D.N.Y.2010) (internal quotations omitted). One purpose of a settlement is to avoid the uncertainty of a trial on the merits. *Clark,* 2010 WL 1948198, at *6. In the instant case, the Plaintiffs have to surmount the liability issues before even getting to damages. Given the bifurcation of this case, Plaintiffs moving into the damages phase would have required significant expenditure of attorneys' and experts' time. The only damages not included in the Settlement consist of compensation for the overtime differential and interest. Pls. Mem. at 11; Hr'g Tr. at 10. Based on the method of Defendants' historic record keeping regarding compensation (through no fault of the Defendants), proving the amount of overtime would have been problematic since "[o]vertime pay was lumped in a general undifferentiated pay category." Pls. Mem. at 11.

***12** On liability and damages, this case likely would have ended up in a classic "battle of the experts." With that comes the inherent risk that a jury could be swayed by an expert for the Defendants who could minimize the amount of the Plaintiffs' losses. *In re Marsh & McClennan,* 2009 WL 5178546, at *6; *Maley,* 186 F.Supp.2d at 365. Moreover, the risk that the named Plaintiffs would be unable to establish damages exceeding the $7 million that the Settlement Fund provides to the Class supports the Settlement. Notwithstanding any success that the Plaintiffs might achieve in establishing liability, they have "avoided substantial risks in proving damages by virtue of" this proposed Settlement. *In re Marsh & McClennan,* 2009 WL 5178546, at *6.

***f. The Risks of Maintaining the Class Action Through The Trial***

The parties here have already litigated the class action certification motion and Defendants' motion for summary judgment. The class certification motion was strongly contested. Judge Block certified the class on August 13, 2007. The Court notes that earlier this year, the Supreme Court rendered its decision in *Wal–Mart v. Dukes,* —— U.S. ——, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011). Like other class actions in the wake of the *Wal–Mart* case, it would not be unusual for the Defendants to move for de-certification, particularly given the ongoing dispute during discovery regarding the appropriate parameters of

the class. Pls. Mem. at 11. The Settlement eliminates that risk as well as the expense and delay inherent in such process and, to that extent, this factor weighs in favor of final approval.

***g. Ability of Defendants to Withstand a Greater Judgment***

The Court acknowledges that the Defendants may be able to withstand a higher judgment. The fact that the Defendants are a municipal entity and several of its agencies makes that assessment a bit less black and white, particularly in light of the current fiscal environment and the fact that Nassau County's finances have been taken over the by the Nassau County Investment Finance Authority ("NIFA"). Based on the circumstances of this specific case, however, and the fact that virtually all of the *Grinnell* factors weigh in favor of the Settlement, this factor is not determinative and standing alone "does not suggest that the Settlement is unfair." *D'Amato,* 236 F.3d at 86; *Dupler,* 705 F.Supp.2d at 241; *Clark,* 2010 WL 1948198, at *6.

***h. Range of Reasonableness of Settlement Fund in Light of Best Possible Recovery***

Under the terms of the Settlement, every single Class Member will receive a direct and immediate economic benefit. Each class member will receive dollar-for-dollar the amount of base pay that she lost as a result of the pay disparity between PCO/PCOS and FCT/FCTS as calculated by the Court-appointed expert based on data supplied by Nassau County. Pls. Mem. at 12. What is significant is that each Class Member would not have received more in base pay had this case been litigated through judgment. *Id.;* Hr'g Tr. at 5. The only compromise made by the Plaintiffs to obtain this result is the foregoing of interest payments on the sums awarded and foregoing payment on the differential on overtime, both of which would have been available had this case been pursued to a successful judgment. Pls. Mem. at 12. The Plaintiffs themselves submit that this is a small sacrifice in exchange for avoiding the potential of several years of risky litigation to achieve that result. *Id.;* Hr'g Tr. at 10. "Because settlement can provide certain and immediate recovery, courts often approve settlements even where the benefits obtained are less than those originally sought." *Velez,* 2010 WL 4877852 at * 14 (collecting cases).

***13** It should be noted that the Plaintiffs have obtained significant and long-lasting relief in that every individual carrying the title of PCO and PCOS going forward benefits from this Settlement. In addition, the named Plaintiffs are each receiving a Service Award of $20,000 for the work, effort and risks that they undertook in pursuing this litigation. The Defendants have also agreed to upgrade immediately any PCO or PCOS not presently in her grade 10 step based on years of service. Goodman Aff. II, Ex. A, ¶ 3.4(a). For all of these reasons, the Settlement is reasonable in light of the maximum possible recovery.

***i. Range of Reasonableness of Settlement Fund to a Possible Recovery in Light of All Attendant Risks of Litigation***

The Court concludes that the Settlement is particularly reasonable for the Class Members in light of the risks of continued litigation discussed above. The Settlement provides complete make whole relief to all Class Members for their loss in base salary. Hr'g Tr. at 5. No Class Member would receive more in back pay for lost base pay had this case been litigated through to a successful judgment. The risk exists, as it would in any litigation, that the Plaintiffs could obtain back pay in amounts less than the Settlement provides. It is also possible that the Plaintiffs could walk away with nothing at all if a jury found that the jobs being compared are not substantially equal in terms of skill, effort and responsibility. Significantly, there is no cost to the Class Members for attorneys' fees or litigation expenses since those monies are not being taken from the Settlement Fund.

After careful consideration of the Settlement in light of the *Grinnell* factors, the Court concludes that the Settlement is both procedurally and substantively fair, reasonable and adequate under Rule 23.

**C. Attorneys' Fees and Costs**

After six years of vigorously contested litigation, the parties to this class action have negotiated a fair and reasonable Settlement. The only remaining issue that the Court must address before approving the Settlement is the motion by the law firm of Eisenberg & Schnell LLP, the Law Offices of Janice Goodman and the Plaintiffs for reasonable attorneys' fees and costs.

**1. Attorneys' Fees**

" '[W]here an attorney succeeds in creating a common fund from which members of a class are compensated for a common injury inflicted on the class,' the attorneys whose considerable effort created the fund are entitled to a reasonable fee set by the Court." *Steinberg v. Nationwide Mut. Ins. Co.,* 612 F.Supp.2d 219, 222 (E.D.N.Y.2009) (quoting *Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 47 (2d Cir.2000)). In class actions when determining appropriate counsel fees, courts have used either the lodestar method or awarded fees based on a percentage of the settlement fund. *Goldberger,* 209 F.3d at 47.

The Court notes that it was only after all of the financial terms of the Settlement were established for the Class Members that the attorneys engaged in negotiations regarding their fees. Goodman Aff. II, ¶ 27. Plaintiffs' counsel provided the Defendants with a summary of all hours spent on this matter and the nature of the work performed, together with a statement of their usual hourly fees. *Id.* In addition, contemporaneous time records and expense records were provided to Defendants' counsel and submitted to the Court. Goodman Aff. II, Exs. C, E; August 23, 2011 Affirmation of Herbert Eisenberg, Esq., in Support of Application for Attorney Fees ("Eisenberg Aff.") [DE 161], Ex. A.

***14** Class Counsel seek approval of an award of attorney's fees in the amount of $355,000 for Eisenberg & Schnell LLP and $415,000 for the Law Offices of Janice Goodman, for a total of $770,000. The Defendants have agreed to pay this amount pursuant to the terms of the Settlement. Therefore, at the outset, the Court notes that the requested attorneys' fees in this case will not be drawn from a common fund, but rather will be paid directly by the Defendants. Consequently, whatever attorneys' fees are awarded will not reduce or diminish the benefit to the class under the terms of the Settlement, which the Court has already found to be fair, reasonable and adequate. *Dupler,* 705 F.Supp.2d at 243. Where the attorneys' fees are to be paid directly by the Defendants and, therefore, "money paid to the attorneys is entirely independent of money awarded to the class, the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members." *McBean v. City of N.Y.,* 233 F.R.D. 377, 392 (S.D.N.Y.2006); *Dupler,* 705 F.Supp.2d at 243. Plaintiffs seek an additional amount of approximately $1,500 in fees and costs incurred subsequent to the settlement negotiations in executing the notice of settlement, finalizing the settlement, and for other items set forth in Point IV(C)(2) below. The Defendants consented to paying these additional fees and expenses. *See* Hr'g Tr. at 15–16.

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed.R.Civ.P. 23(h). Notwithstanding the Defendants' consent to the award of fees, the Court must assess the reasonableness of the award when considering whether the settlement is fair. *See Ersler v. Toshiba Am., Inc.,* No. CV–07–2304, 2009 WL 454354, at *7 (E.D.N.Y. Feb.24, 2009); *Dupler,* 705 F.Supp.2d at 244. The two methods for determining the reasonableness of a fee request in a settlement are: (1) the lodestar method which multiples the hours reasonably expended on the case by a reasonable hourly rate, and (2) the common fund method in which the amount is calculated as a percentage of the award to the class. *See McDaniel v. County of Schenectady,* 595 F.3d 411, 417–422 (2d Cir.2010). "The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal–Mart Stores,* 396 F.3d at 121 (internal quotation omitted). By contrast, the lodestar method as characterized by the Second Circuit "creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line item fee audits." *Id.* (internal quotation and brackets omitted). In the instant matter, the Court finds that the requested attorneys' fees are reasonable under both the percentage method and the lodestar method for the following reasons.

***a. Common Fund/Percentage Fee***

***15** As noted above, the Second Circuit favors awarding fees according to the "percentage of the fund" method in common fund cases. Keeping in mind that this is not a common fund case, Plaintiffs nonetheless submit that if the agreed upon fees were viewed as a percentage of the Settlement, Plaintiffs' fee award would fall well within the range of reasonable fees approved by the courts in this Circuit. *See, e.g., McBean,* 233 F.R.D. at 393 ("In common fund cases, awards in the range of 25% are common ... and while this is not a common fund case, the fact that the award here is lower than many awards actually taken from a common fund, at the expense of

absent class members, is further evidence of its reasonableness."); *Odom v. Hazen Transport, Inc.,* No. 10–CV–6304T, 275 F.R.D. 400, 412 (W.D.N.Y.2011) (attorneys' fees representing 32.6% of the total settlement fund held to be reasonable); *Ersler,* 2009 WL 454354, at *7 (the award of fees of approximately 25% of the settlement found to be still within the range of reasonableness); *Stefaniak v. HSBC Bank, USA, NA,* No. 1–05–CV–7205, 2008 WL 7630102, at *3 (W.D.N.Y., June 28, 2008) (finding that fee awards of 33% of the settlement fund is typical of class action settlements in the Second Circuit) (collecting cases); *Maley,* 186 F.Supp.2d at 369 (approving attorneys' fees of 33.3% of $11.5 million settlement fund).

As one court in this Circuit has observed

> A recent study surveying the award of attorneys' fees in class action settlements reviewed data on cases nationwide and found that the mean fee award for employment class action settlements is 27 percent of the recovery, and the median is 25 percent of the recovery ... The study notes, however, that those percentages do not account for an important indicator of the fee award—risk. Fee awards for class action in cases that are "low/medium" risk average 26.2 percent of total recovery, and in cases that are "high" risk average 35.1 percent of total recovery.

*Velez,* 2010 WL 4877852, at *21 (citing Theodore Eisenberg and Geoffrey P. Miller, *Attorneys Fees and Expenses in Class Action Settlements: 1993–2008,* NYU Center for Law, Economics and Organization, Working Paper No. 09–50 (November 2009) at Table 8). In the instant action, the requested fee award of $770,000 represents, at most, 11% of the $7 million Settlement fund obtained for the Class Members. Class Counsel undertook this case on a contingency fee basis, committed substantial resources to its prosecution, and risked time and effort with no ultimate guarantee that they would be compensated for those efforts. This Court, given its substantial knowledge of this case and its involvement in the full measure of settlement negotiations, places this case right in the middle of the continuum between low/medium risk and high risk. Significantly, looking at the mean fee award of 27% in this context, the 11% which the attorneys' fee award represents here is well less than half of that mean.

***16** The fact that the fees requested here are comparable to fees that courts have found reasonable even when taken out of a common fund—and comparatively speaking are significantly less than the percentages awarded in such cases—weighs in favor of the fees' reasonableness. *See Dupler,* 705 F.Supp.2d at 244. Likewise, the fact that counsel did not negotiate the issue of attorneys' fees until after resolving the appropriate settlement fund for the class also weighs in favor of the reasonableness of the fees. *Id.* All of the factors set forth in *Goldberger v. Integrated Res. Inc.,* 209 F.3d 43, 51 (2d Cir.2000), therefore, weigh in favor of this very reasonable fee award of 11% of the settlement fund.

***a. Lodestar Method***

The Court also finds that the fees requested are reasonable under the lodestar method. Courts have referred to the lodestar comparison as a "cross-check" on the issue of reasonableness. *See Velez,* 2010 WL 4877852, at *22; *Ersler,* 2009 WL 454354, at *7. According to the undisputed billing records, Class Counsel have collectively expended more than 1,275 hours[2] on this litigation over the course of six years. Plaintiffs' counsel, Janice Goodman, Esq., spent over 600 hours litigating this action. Goodman Aff. II, ¶ 40. Plaintiffs' co-counsel, Eisenberg & Schnell LLP, expended over 675 hours of attorney and paralegal time in prosecuting this matter. Eisenberg Aff., ¶ 2. Counsels' hourly billing rates are $700 and $650 respectively. Goodman Aff. II, ¶ 37; Eisenberg Aff., ¶ 11.

[2] Attorneys Goodman and Eisenberg set forth in their respective affirmations various tasks undertaken in this case that are well in excess of the 600 and 675 billing hours they assert for payment, for which they have agreed not to seek fees.

The remaining hourly rates of Eisenberg & Schnell LLP range from $75 for paralegals to $450 for a senior attorney. Eisenberg Aff., ¶¶ 10, 11. By multiplying the hours reasonably expended by Attorney Goodman (600 hours @ $700 per hour), the Court arrives at a lodestar figure of $420,000. The Settlement document calls for a payment of $415,000 to Attorney Goodman—less than the lodestar figure.[3] *See* Amended Stipulation of

Settlement and Release [DE 159], § 3.2(a)(ii). Likewise, the Settlement document also calls for a payment of $355,000 for attorneys' fees to Eisenberg & Schnell LLP, an amount which the Court approximates to be less than the lodestar figure calculated for the firm.

[3] In *Arbor Hill Concerned Citizens v. County of Albany,* 522 F.3d 182 (2d Cir.2008), the Second Circuit determined that "[t]he meaning of the term 'lodestar' has shifted over time, and its value as a metaphor has deteriorated to the point of unhelpfulness." *Arbor Hill,* 522 F.3d at 190. Further, the Second Circuit reasoned that "[w]hat the district courts in this circuit produce is in effect not a lodestar as originally conceived but rather a 'presumptively reasonable fee.' " *Id.* at 189. Regarding the reasonable hourly rate portion of the presumptively reasonable fee standard, the Second Circuit has suggested that the district court consider "what a reasonable, paying client would be willing to pay" when setting a reasonable hourly rate. *Arbor Hill,* 522 F.3d at 184.

Although the Defendants have proffered no objection to the proposed hourly rates, the Court believes they are at the very high end of what courts in the Eastern District of New York typically awarded in complex cases.[4] Yet, courts have approved, in class actions where the defendants have agreed to pay the specific attorneys' fees, a lodestar based on billable rates of between $405 and $790 for partners and $270 to $500 for associates. *See Steinberg,* 612 F.Supp.2d at 224; *Ersler,* 2009 WL 454354, at *7. As in the instant action, the attorneys' fees in *Steinberg* and *Ersler* were not drawn from the settlement fund but rather were separate and apart from the settlement payments to class members and were consented to by the defendants in those cases. The Court also notes that Class Counsel here have not asked for a lodestar multiplier at all.

[4] *See, e.g., Unilever Supply Chain, inc. v. I & I Wholesale Food Inc.,* No. 10–CV1077, 2011 WL 1113491, at *8 (E.D.N.Y. Feb. 17, 2011), *adopted by* 2011 WL 1099841 (E.D.N.Y. Mar.24, 2011) (awarding $440 for partners and $160 to $200 for associates); *Century 21 Real Estate LLC,* 666 F.Supp.2d at 299 (awarding $320 for partners and $230 for associates); *Amerisource Corp. v. RxUSA Int'l Inc.,* No. 02–cv–2514, 2010 WL 2160017, at *11 (E.D.N.Y. May 26, 2010) (awarding between $350 and $400 for partners and $250 for associates); *Luca v. Cty. of Nassau,* 698 F.Supp.2d 296, 303–306 (E.D.N.Y.2010) (finding $400 to be reasonable rate for experienced attorney's services).

***17** As a consideration, the Court also looks to the quality of the representation on behalf of the PCO/PCOS Class Members. To make that determination, courts review, among other things, the backgrounds of the lawyers involved in the lawsuit and the recovery obtained. *See Steinberg,* 612 F.Supp.2d at 223 (citing *Taft v. Ackermans,* No. 02 Civ. 7951, 2007 WL 414493, at *10 (S.D.N.Y. Jan 31, 2007)). The quality of the representation in this litigation is evident from the extensive record. Class counsel are well known and well regarded class action employment lawyers who have extensive experience prosecuting and settling employment discrimination and equal pay claims. Attorney Goodman has been in practice for nearly 40 years and her primary area of specialization is employment discrimination litigation, in which she has prosecuted both class actions and individual claims. Goodman Aff. II, ¶ 31–32. She also serves as General Editor of a three volume practitioners' manual entitled *Employee Rights Litigation: Pleadings and Practice,* published by Matthew Bender and has taught employment discrimination law at Cardozo Law School, New York Law School and Rutgers Law School. *Id.,* ¶ 34. Both Attorney Goodman and Attorney Eisenberg are Fellows of the College of Labor and Employment Lawyers. *Id.,* ¶ 35; Eisenberg Aff., ¶ 8. Since his admission to the practice of law some 27 years ago, Attorney Eisenberg's area of specialization has been employment law and employment discrimination litigation, with primary work in actions involving equal pay, sexual harassment, employment contracts and pension benefits. *Id.,* ¶ 4–5. He is a frequent author and lecturer on employment discrimination law topics and has authored multiple *amicus* briefs on behalf of the National Employment Lawyers Association to the Second Circuit and the New York State Court of Appeals. *Id.,* ¶ 7. The substantial Settlement here reflects the excellent result both counsel have achieved for their clients.

Notwithstanding that result, the Court is mindful of this Circuit's adherence to the forum rule which states that a district court should generally use the prevailing hourly rates in the district where it sits. *See Polk v. N.Y. State Dep't of Corr. Servs.,* 722 F.2d 23, 25 (2d Cir.1983). The Second Circuit has since clarified that district courts "may use an out-of-district hourly rate—or some rate in between the out-of-district rate sought and the rates charged by local attorneys—in calculating the

presumptively reasonable fee if it is clear that a reasonable, paying client would have paid those higher rates." *Arbor Hill,* 522 F.3d at 191. The Second Circuit cautioned that "[w]e presume, however, that a reasonable, paying client would in most cases hire counsel from within his district, or at least counsel whose rates are consistent with those charged locally." *Id.* Nevertheless, "[t]his presumption may be rebutted—albeit only in the unusual case—if the party wishing the district court to use a higher rate demonstrates that his or her retention of an out-of-district attorney was reasonable under the circumstances." *Id; Simmons v. New York City Transit Auth.,* 575 F.3d 170, 175 (2d Cir.2009).

***18** The Court concludes that Class Counsel here has successfully rebutted the presumption. In this regard, Class Counsel state that it is appropriate to recognize their New York County billing rates in this settlement for several reasons. First, Attorney Goodman points out that the Plaintiffs sought her out because she brings special expertise to this case. Goodman Aff. II, ¶ 3 8. Significantly, Attorney Goodman previously represented Police Communications Technicians in New York City in the same type of Equal Pay Act litigation alleging disparity of pay with the New York City Fire Dispatchers. *Id.; see Scotti v. The City of New York,* 84 Civ. 5462, 1991 U.S. Dist. Lexis 15256 (S.D.N.Y. June 21, 1991). In addition, Plaintiffs' union representatives, although supportive of Plaintiffs' position, would not undertake litigation on behalf of the class. *Id.,* ¶ 38. Moreover, Plaintiffs were unable to find competent class action counsel in the area who would undertake the class litigation on a contingency fee basis. *Id.* Attorney Eisenberg was brought on as co-counsel because of his extensive litigation experience in employment discrimination cases. Pls.' Mem. at 15. Looking to the totality of the circumstances here, the Court finds that even using counsels' above average hourly rates, the "presumptively reasonable fee" is nevertheless fair in this context. Here, although there were no guarantees that any fee would be achieved or awarded when Plaintiffs' counsel took on this action, counsel seek no multiplier above and beyond the presumptively reasonable fee amount which is their current billing rate times the number of hours expended. *See Ersler,* 2009 WL 454354, at *7.

The Court has also reviewed the contemporaneous time records of each counsel. *See* Goodman Aff. II, Ex. C; Eisenberg Aff., Ex. A. The Court takes into account as well the sworn statements of counsel that they were "scrupulous to ensure that there was no unnecessary duplication of work" and that "every effort was made to divide work to avoid overlap." Goodman Aff. II, ¶ 41. Based upon this Court's close supervision of this matter, as well as the Court's review of the billing records, the Court is satisfied that the work done here was necessary and proper, particularly in light of the vigorous defense proffered, as evident in the continuous stream of motion practice. For all of these reasons, Class Counsels' request for final approval of the negotiated attorneys' fees in the amount of $770,000 is reasonable and approved.

**2. Costs**

The Court also awards Class Counsel reimbursement of their litigation expenses, including their expert witness fees and transcript costs. Originally, Plaintiffs set forth in the Amended Stipulation of Settlement and Release [DE 159] costs in the amount of $1,846.69 payable to Eisenberg & Schnell, LLP and $128,789.00 payable to the Law Offices of Janice Goodman for costs associated with this matter. The Court has reviewed the detailed statement of costs attached to the affirmations of Plaintiffs' counsel and finds the costs to be reasonable and necessary to the successful prosecution of this litigation.

***19** At the Fairness Hearing, Plaintiffs' counsel moved to amend the previously stated costs and to increase the amount slightly based upon the additional costs (i.e., mailing costs, establishing a website for class members to access information in the case, additional court conferences, etc.) which accrued between the time the parties initially agreed to settle and the actual final settlement. *See* Hr'g Tr. at 15. The total increase was approximately $1,500. Defendants' counsel consented to the increase at the Fairness Hearing. *Id.* at 15–16. The Court therefore awards costs in the following amounts which the Court deems to be reasonable: (1) $2,170.66 to Eisenberg & Schnell, LLP and (2) $130,080.98 to the Law Offices of Janice Goodman. "Courts typically allow counsel to recover their reasonable out-of-pocket expenses." *Clark,* 2010 WL 1948198, at *9 (citing *In re Indep. Energy Holdings PLC Sec. Litig.,* 302 F.Supp.2d 180, 183 n. 3 (S.D.N.Y.2003)). As noted previously, the Defendants are paying these costs and they shall not be taken from the Settlement Fund.

**D. The Settlement Administrator**

As part of the Settlement, Nassau County is setting aside $50,000 for the Settlement Claims Administrator who

shall process and resolve any challenge filed by a class member who disputes the amount of her award. Amended Stipulation of Settlement and Release [DE 159], §§ 2.16, 3.1(B)(c). These amounts shall be paid from the Settlement Fund. The Court hereby confirms Abigail Pessen as the Settlement Claims Administrator. She shall be paid at a rate of $425 per hour, plus disbursements, with a total maximum of $35,000 for all services rendered. If necessary to conclude calculations, the Settlement Claims Administrator may engage the services of APTMetrics, Inc., up to a maximum of $15,000 for any assistance needed. *Id.,* § 3.3(c). At the conclusion of this matter, the Settlement Claims Administrator shall provde the Court with a full statement of work performed and payments billed and made. *Id.,* § 3.3(d).

**E. The Service Awards**

The Settlement also provides that each named Plaintiff shall be awarded a gross payment of $20,000 as a Service Award for initiating and prosecuting this litigation. *See* Amended Stipulation of Settlement and Release, Section 3.1(b). Service awards are common in class-action cases. They are "important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiff." *Khait v. Whirlpool Corp.,* No. 06 Civ. 6381, 2010 WL 2025106, at *9 (E.D.N.Y. Jan. 20, 2010) (awarding $15,000 service awards each to five named plaintiffs and $10,000 service awards each to ten other named plaintiffs); *Dupler,* 705 F.Supp.2d at 245–46 (finding enhancement awards of $25,000 to one plaintiff and $5,000 to a second plaintiff reasonably based on the participation of the two individuals in the action to date); *Willix v. Healthfirst, Inc.,* No. 07 Civ. 1143, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (finding service awards of $30,000, $15,000 and $7,500 to various plaintiss to be reasonable); *Clark,* 2010 WL 1948198, at *9 (awarding $10,000 service awards each to seven class representatives). These awards, along with the rest of the Settlement, were negotiated under this Court's supervision, which carries a presumption that the amounts are reasonable and the result of arm's-length negotiations. The Court further finds that the Service Awards here "when compared to incentive awards given generally to named plaintiffs across a variety of class actions ... fall solidly in the middle of the range." *McBean,* 233 F.R.D. at 391–92 (citing *Fears v. Wilhelmina Model Agency, Inc.,* No. 02 Civ. 4911, 2005 WL 1041134, at *3 (S.D.N.Y. May 5, 2005 (collecting cases illustrating a range of incentive awards and approving an awards of $25,000). These amounts shall be paid from the Settlement Fund.

**V. *CONCLUSION***

***20** For all of the reasons set forth in this Final Order and Judgment ("Final Order"), the Court hereby grants Final Approval of the Amended Stipulation of Settlement and Release ("Settlement Agreement) and directs the following:

1. Within thirty (30) days of this Final Order, Defendants shall make back pay payments to each class member in the amount calculated by the Court-appointed expert.

2. Within thirty (30) days of the entry of this Final Order, Defendants shall pay to each individually named plaintiff twenty thousand ($20,000) dollars.

3. Within thirty (30) days of the entry of this Final Order, Defendants shall set aside fifty thousand ($50,000) dollars to cover the costs of administration of the Settlement Agreement.

4. Within thirty (30) days of the entry of this Final Order, Defendants shall pay class counsel fees as follows: to Eisenberg & Schnell LLP, $355,000; to the Law Offices of Janice Goodman, $415,000.

5. Within thirty (30) days of the entry of this Final Order, Defendants shall reimburse Class Counsel costs as follows: to Eisenberg & Schnell LLP, $2,170.66; to the Law Offices of Janice Goodman, $130,080.98.

6. All claims asserted in the litigation and the claims of all class members who did not opt out are hereby dismissed.

7. This Court shall retain jurisdiction for two (2) years from the date of entry of this Final Order to preside over implementation of any settlement provisions.

**SO ORDERED.**