UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADRIANNE CRONAS, et al.,	
Plaintiffs,	
- against -	06 Civ. 15295 (RMB)
WILLIS GROUP HOLDINGS, LTD., et al.,	**DECISION & ORDER**
Defendants.	

Having reviewed the record herein (and also the related record of proceedings before then United States District Judge Gerard E. Lynch in the related matter of Hnot, et al. v. Willis Group Holdings, Ltd., et al., No. 01 Civ. 6558, including Judge Lynch's orders, dated March 18, 2005 and February 22, 2008, respectively), including the amended class action complaint ("Complaint") in this matter, filed July 3, 2008 by Adrianne Cronas ("Cronas") and others (collectively, "Plaintiffs"), alleging "a pattern and practice of sex discrimination and retaliation" against "female officers and officer-equivalents" by Willis Group Holdings, Ltd. ("Willis"), Willis of New York ("WNY"), and certain other Willis affiliates (collectively, "Defendants"), in violation of, among other authorities, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (Am. Compl. at 1–2, 6); the Cronas parties' joint letter, dated January 13, 2011, informing the Court that they "have reached an agreement in princip[le] . . . for a settlement of this matter" (Parties' Ltr. to the Ct., dated Jan. 13, 2011, at 1); Plaintiffs' unopposed motion, dated May 6, 2011, for preliminary approval of a proposed (settlement) consent decree, executed by the parties on May 5, 2011("Proposed Consent Decree"), which would "achieve[] both injunctive and monetary relief for 317 current and former female employees of [WNY]" "as a full settlement of . . . this legal action" (Pls.' Mem. of Law, dated May 6, 2011, at 1–2; see

Proposed Consent Decree § III.E); the transcript of proceedings held before the Court on June 7, 2011 "to discuss issues in the [P]roposed [Consent Decree]" (Tr., dated June 7, 2011 ("June 7, 2011 Tr."), at 2:3-6); Plaintiffs' motion, dated August 25, 2011, for preliminary approval of a revised proposed consent decree, executed by Plaintiffs on August 25, 2011 ("Revised Proposed Consent Decree") (see Pls.' Mem. of Law, dated Aug. 25, 2011 ("Pls. Mem.")); Defendants' "response" to Plaintiffs' August 25, 2011 motion, dated September 9, 2011, arguing that the United States Supreme Court's June 20, 2011 decision in Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011), "presents . . . obstacles to class certification, and thus to approval of the [Revised P]roposed Consent Decree" (Defs.' Mem. of Law, dated Sept. 9, 2011 ("Defs. Mem."), at 1); Plaintiffs' "reply," dated September 23, 2011, arguing that "certification of the proposed settlement class, which is substantially similar to the class certified [by Judge Lynch in Hnot] remains appropriate following Wal-Mart" (Pls. Reply Mem. of Law, dated Sept. 23, 2011 ("Pls. Reply"), at 3); the transcript of proceedings held before the Court on September 28, 2011, during which Defendants confirmed that the parties "have an agreement [to settle]" that is "fair and reasonable," and that Defendants would "accept" a determination by the Court that the proposed settlement class "is on the side of Wal-Mart that allows [the Court] to approve [it]" (Tr., dated Sept. 28, 2011 ("Sept. 28, 2011 Tr."), at 6:23–7:21); and applicable law, **the Court hereby grants Plaintiffs' motion for preliminary approval of the Revised Proposed Consent Decree [#133], certifies the proposed class for settlement purposes, and approves the proposed amended class notice**, as follows:

(I) The Court, "guided by the Second Circuit's recognition that public policy favors the settlement of class actions," Bourlas v. Davis Law Assocs., 237 F.R.D. 345, 354 (E.D.N.Y. 2006) (collecting cases), grants preliminary approval of the Revised Proposed Consent Decree.

See, e.g., Johnson v. Brennan, No. 10 Civ. 4712, 2011 WL 1872405, at *1 (S.D.N.Y. May 17, 2011). The Revised Proposed Consent Decree provides for significant injunctive relief, compensates the class for "more than two thirds of [its] total economic loss," and was reached after nearly four years of litigation (not including the lengthy Hnot litigation between the same parties), thorough discovery and analysis of the facts by the parties and by retained experts, full briefing of several substantive motions, and two days of "settlement negotiations with the aid of a skilled mediator." (Pls. Mem. at 1–4, 6.) It is "the product of serious, informed, non-collusive negotiations" and is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard." In re NASDAQ Mkt.-Makers Antitrust Litig., 176 F.R.D. 99, 102 (S.D.N.Y. 1997); see In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 445 (S.D.N.Y. 2004); (Sept. 28, 2011 Tr. at 6:15–7:5.)

Following the June 7, 2011 conference with the Court, the parties removed from the Proposed Consent Decree various potential "obvious deficiencies" which gave "unduly preferential treatment [to] class representatives," In re Prudential Sec. Inc. Ltd. P'ships Litig., 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (internal quotation marks omitted), such as proposed $60,000 service awards to Cronas and Linda Pasichnyk, another proposed class representative ("Pasichnyk") (see Proposed Consent Decree § IV.V.A); and separate individual payments of $295,866.06 to Pasichnyk and $50,000 to Theresa Reardon, a third named plaintiff in the Complaint ("Reardon"), because Pasichnyk's individuals claims were asserted only in New York State Supreme Court, and Reardon's individual claims were compelled to arbitration and dismissed from this lawsuit by Judge Lynch on November 20, 2008 (Proposed Consent Decree §§ II, III.O, IV.V.H); (see June 7, 2011 Tr. at 5:7–6:11); 2008 WL 4964695.

(II) The proposed class of women employed by WNY in its single, New York City location in officer or officer-equivalent positions during the period 2002–2007 (see Revised Proposed Consent Decree § III.E), is hereby certified for purposes of settlement, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. See Hnot, 228 F.R.D. 476, 480, 486 (S.D.N.Y. 2005) (Lynch, J.) (certifying under Rule 23(a) and (b)(2) a class of "current and former female employees . . . employed by [Defendants in New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, and New Hampshire] in positions eligible for the award of officer titles between 1998 and 2001" who sought "injunctive relief" and "damages for back pay" (internal quotation marks omitted)); Hnot, 241 F.R.D. 204 (S.D.N.Y. 2007) (Lynch, J.) (denying Defendants' motion for decertification); Cronas, 2007 WL 2739769, at *2 (S.D.N.Y. Sept. 17, 2007) (Lynch, J.) ("[T]he substantive allegations of Cronas's pattern and practice claim are almost identical to those in the Hnot litigation . . . .").

(a) It is undisputed that Plaintiffs have established the Rule 23(a) prerequisites of numerosity, typicality, and adequacy. See Fed. R. Civ. P. 23(a)(1), (3), (4); see, e.g., Hnot, 228 F.R.D. 476; Hart v. Rick's Cabaret Int'l Inc., No. 09 Civ. 3043, 2010 WL 5297221, at *6 (S.D.N.Y. Dec. 20, 2010). "[N]umerosity is presumed at a level of 40 members." Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995). And Plaintiffs, who were employed by Defendants in executive positions during the relevant class period, present claims that are "typical of those of the class," Marisol A. v. Giuliani, 126 F.3d 372, 376 (2d Cir. 1997), "have an interest in vigorously pursuing the claims of the class, . . . have no interests antagonistic to the interests of other class members," Denney v. Deutsche Bank AG, 443 F.3d 253, 269 (2d Cir. 2006), and are represented by counsel who "are qualified, experienced and able to conduct

th[is] litigation," In re Flag Telecom Holdings, Ltd. Sec. Litig., 574 F.3d 29, 35 (2d Cir. 2009) (internal quotation marks omitted).

Plaintiffs have also shown commonality, i.e., "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). As in Hnot, "the delegation policy [the class] challenge[s] has subjected them all to discrimination at the hands of the same regional officers"; the class is limited in geographic scope to Willis's (single) New York office; and Plaintiffs' "statistical evidence is 'sufficient to demonstrate common questions of fact regarding the discriminatory implementation of [Willis's] company-wide policies regarding promotion and [compensation],'" Hnot, 228 F.R.D. at 482–83 (quoting Caridad v. Metro-N. Commuter R.R., 191 F.3d 283, 292 (2d Cir. 1999), overruled on other grounds by In re IPO Sec. Litig., 471 F.3d 24, 40 (2d Cir. 2006)); (see Revised Proposed Consent Decree § III.E; Pls. Reply at 5–7.)[1]

Very much unlike Wal-Mart, where the class had 1.5 million members and 3,400 store locations were involved, see 131 S. Ct. at 2547, the Cronas class of 317 officer-level women were all employed at a single location, where pay and promotion decisions were subject to a single ultimate decision-maker (see Pls. Reply at 2); see also Delagarza v. Tesoro Ref. & Mktg. Co., No. 09 Civ. 5803, 2011 WL 4017967, at *8 (N.D. Cal. Sept. 8, 2011) ("The instant case stands in contrast to the putative class in [Wal-Mart]. Here, the purported class members all work at the same facility."). And, unlike Wal-Mart, where the plaintiffs' "information about disparities at the regional and national level d[id] not establish the existence of disparities at individual stores," 131 S. Ct. at 2555 (internal quotation marks and alterations omitted), Plaintiffs' statistical and anecdotal evidence in this case suggests "statistically significant

[1] As part of the (Revised) Proposed Consent Decree, "Willis expressly denies any wrongdoing or liability." (Proposed Consent Decree § IV.D; Revised Proposed Consent Decree § IV.D.)

disparities" between men and women employees with respect to pay and job titles at a single Willis office. (Pls.' Mem. of Law in Supp. of Mot. for Class Cert., dated Aug. 9, 2010, at 5–6; see Pls. Reply at 5–6).

The relevant facts clearly distinguish the commonality analysis in Wal-Mart from the analysis in this case. (See Pls. Reply at 5.) The class's central common question – "whether the excessive subjectivity in pay and promotion decisionmaking at [WNY] had a disparate impact on female officers" (Pls. Reply at 4 (alterations omitted); see Defs. Mem. at 5) – "is capable of classwide resolution, which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke," Wal-Mart, 131 S. Ct. at 2551, 2554.

(b) Plaintiffs have also shown that final injunctive relief is appropriate respecting the class as a whole and is central to the resolution of this matter. See Fed. R. Civ. P. 23(b)(2); see also Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 614 (1997) ("Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples [of Rule 23(b)(2) class actions]."); Comer v. Cisneros, 37 F.3d 775, 784, 796 (2d Cir. 1994) (certifying Rule 23(b)(2) class which sought "to enjoin . . . racially discriminatory policies and practices in the . . . operation of three interrelated subsidized housing programs in the Buffalo metropolitan area"). Plaintiffs' classwide claim for backpay does not preclude class certification under Rule 23(b)(2) because such monetary relief is "'incidental to [the class's] requested injunctive . . . relief.'" Wal-Mart, 131 S. Ct. at 2560 (quoting Allison v. Citgo Petroleum Corp., 151 F.3d 402, 415 (5th Cir. 1998)). The Court notes that Defendants "agree[d] . . . to a Federal Rule of Civil Procedure 23(b)(2) class" in the Proposed Consent Decree, which was executed on May 5, 2011, approximately six weeks before the Wal-Mart decision. (Proposed Consent Decree

§ IV.C.1; Revised Proposed Consent Decree § IV.C.1.) "[A] change in the law does not render an agreement void. . . . The uncertainty of a legal position and the desire to avoid the risk of a lawsuit are the impetus for many out-of-court settlements." Anita Founds., Inc. v. ILGWU Nat'l Ret. Fund, 902 F.3d 185, 189–90 (2d Cir. 1990). Plaintiffs' backpay claim does "'not require additional hearings to resolve the disparate merits of each individual's case,'" and "'neither introduce[s] new substantial legal or factual issues, nor entail[s] individualized determinations.'" Wal-Mart, 131 S. Ct. at 2560 (quoting Allison, 151 F.3d at 415). In contrast to Wal-Mart, Defendants here have agreed in the Revised Proposed Consent Decree that "[t]he allocation [of backpay to class members] will be done by formula" (Revised Proposed Consent Decree § V.A), such that Defendants have "no remaining right to raise individual defenses or seek individualized determinations of back pay, which was the concern of the Court in Wal-Mart" (Pls. Mem. at 12; see Pls. Reply at 8); DeHoyos v. Allstate Corp., 240 F.R.D. 269, 285 (W.D. Tex. 2007) (finding monetary claims "incidental" in settlement context where the parties had agreed that monetary payments would be "based on an objective calculation and not dependent on class members' intangible, subjective differences" (citing Allison, 151 F.3d at 415)). "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." Amchem, 521 U.S. at 620 (citing Fed. R. Civ. P. 23(b)(3)); see Allison, 151 F.3d at 414–15 ("[T]he [incidental] requirement of Rule 23(b)(2) serves essentially the same functions as the procedural safeguards and efficiency and manageability standards mandated in (b)(3) class actions.").

As Plaintiffs persuasively argue, Defendants' "supposition that class members would prefer to opt out and pursue individual claims is unfounded" in view of the fact, among others,

that "[n]o class members objected to or opted out of the predecessor Hnot settlement, and in the 13 years that the Hnot-Cronas litigation has been ongoing, not one individual class member has come forward to bring individual discrimination claims against [WNY] outside of the class action cases." (Pls. Reply at 9–10.) In any event, the Court will have an opportunity to hear from any such objectors at the fairness hearing, during which it will consider the fairness, reasonableness, and adequacy of the Revised Proposed Consent Decree, and whether it should be approved. See Latino Officers Ass'n v. City of N.Y., No. 99 Civ. 9568, 2004 WL 574493, at *3 (S.D.N.Y. Mar. 22, 2004).

(III) Plaintiffs' amended proposed class notice, filed October 18, 2011 [#141], reflects the Court's comments, and the form and method of notification set forth therein are hereby approved as "appropriate." Fed. R. Civ. P. 23(c)(2)(A). The proposed form and method are "'of such nature as reasonably to convey the required information [to the class] and . . . afford a reasonable time for those interested to make their appearance.'" McReynolds v. Richards-Cantave, 588 F.3d 790, 804 (2d Cir. 2009) (quoting Soberal-Perez v. Heckler, 717 F.3d 36, 43 (2d Cir. 1983) (internal alterations omitted)).

Dated: New York, New York
October 18, 2011

RMB

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