Lora et al v. J.V. Car Wash, Ltd. et al

2015 | Cited 0 times | S.D. New York | November 18, 2015

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UNITED STATES COURT SOUTHERN OF YORK RONARD LORA, HUGO MARCO ANTONIO LORA, EDUARDO LORA, PAULINO, JOSE RODRIGUEZ, JOSE RODOLFO RODRIGUEZ-TINEO,

WASH, CARWASH CORP., WEBSTER WASH CORP., WASH CORP.,

WASH CORP., JOSE VAZQUEZ, SATURNINO VARGAS, JOSE

RAMON PEREZ, DOMINGO "DOE,"·. ADOLFO FEDERUS, ADOLFO "DOE," JOHN DOES 1-10,

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9010 (LLS) (AJP) OPINION ORDER

U.S.C. 201

Peck, United States

Peck's

DISTRICT DISTRICT NEW

RIVERA, DIAZ, MELVIN GIOVANNI

and

individually and on behalf of others similarly situated,

Plaintiffs, - against - J.V. CAR LTD., BROADWAY HAND

HAND CAR HARLEM HAND CAR BAYWAY HAND CAR JIMENEZ,

originally sued as and

Defendants.

FILED : ___

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Following settlement of this wage-and-hour case, plaintiffs moved for an award of attorney's fees and costs under the Fair Labor Standards Act, 29 § et seq., and New York Labor Law. The motion was referred to the Honorable Andrew J.

Magistrate Judge, for his consideration, report, and recommendation.

For the reasons set forth below, the court adopts Judge

report and recommendation and grants the motion against defendants J.V. Car Wash, Ltd., Broadway Hand Carwash Corp., Webster Hand Car Wash Corp., Harlem Hand Car Wash Corp., Bayway Hand Car Wash Corp. and Jose Vazquez, jointly and severally, to

$112,050.36

BACKGROUND

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Perez, 1-10--were See 2015 Steven the extent of $1,214,431.86 in attorney's fees and in costs.

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Plaintiffs' unopposed supplemental application for $24,445.83 in attorney's fees incurred in

responding to defendants' objections to the report and recommendation is also granted, for a total award of attorney's fees and costs of $1,350,928.05.

Judge Peck ably summarized the history of this case:

December 9, plaintiffs filed their initial complaint as a collective action on behalf of Ronard Lora and Hugo Rivera, and others similarly situated. (Dkt. No. 1: Compl.) In July they amended their complaint to add additional named plaintiffs. (Dkt. No. 49: Am. Compl.) The amended complaint also added retaliation claims alleging that defendants reduced some plaintiffs' hours, reduced the number of days of work per week for some, and terminated some plaintiffs. Am. Compl. 372-79.)

As the Court is aware, and as detailed in a lengthy affidavit submitted by plaintiffs' counsel Laura Longobardi (Dkt. No. 151), numerous delays in the progress of the lawsuit ensued, including inter alia, multiple changes in defense counsel; allegations that plaintiffs were "criminal 'delinquents'" who had compelled defendant Jose Vazquez, the owner of the defendant car washes, to allow them to conduct their own business on his premises using his equipment and material; repeated failures by the defendants to respond promptly or completely to discovery demands; and allegations by defendants that plaintiffs engaged in criminal witness tampering. Dkt. No. 151: Longobardi Aff. 7-9, Defendants' firing of and replacement of defense counsel on

1 While not addressed by the parties or Judge only those defendants were parties to the settlement. Accordingly, plaintiffs have only prevailed against, and can only recover their attorney's fees and costs from, those defendants. Although not parties to the agreement, the other individual defendants--Saturnino Vargas, Jose Jimenes, Ramon Domingo "Doe," Adolfo Federus, and John Does released by plaintiffs pursuant to the settlement agreement. Nov. 16, Letter from Arenson, Dkt. No. 173.

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FLSA On 20, the eve of depositions added to the delays and costs. (Longobardi Aff. 74-88.) too did defendants' meritless motion to dismiss (Dkt. No. 74), which Judge Stanton denied on September 27, 2013. Dkt. No. 89: 9/27/13 Order Denying Motion to Dismiss.) As plaintiffs' counsel correctly notes,

normal difficulties and expenses involved in prosecuting a multi-plaintiff case were multiplied considerably by the tactics of Defendant Jose Vazquez . . . [whose] tactics--all of which were designed to delay, distract and derail this litigation--imposed a significant burden on this firm and on the Plaintiffs." (Dkt. No. 143: Arenson Aff. 12; see also Dkt. No. 159: Longobardi Reply Aff. 2: that this case involved eighteen Plaintiffs, all with individual work histories (including seven Plaintiffs with retaliation claims), at four separate car washes, and seven named defendants, this case was complex. Defendants' conduct, however, took this case to another level that generated significantly more work . . . . Defendants engaged in every conceivable contorted tactic to avoid addressing the merits of Plaintiffs' claims .... Plaintiffs were forced to respond to Defendants' bad faith and delaying tactics. As a result, Defendants cannot be heard to complain about the time [plaintiffs' counsel] spent on that

October 16, 2013, defendants (Vazquez and the car wash entities) filed bankruptcy petitions in the District of New Jersey, which stayed this lawsuit. (Longobardi Aff. 110-11; Mellk Aff. 6.) The bankruptcy filings occurred half an hour before plaintiffs were scheduled to depose defendant Vazquez. (Longobardi Aff. 111.) November 4, 2013, plaintiffs' counsel moved to lift the bankruptcy stay. (Longobardi Aff.

120; Mellk Aff. 7.) November 26, 2013, the bankruptcy court granted plaintiffs' motion and lifted the stay. (Longobardi Aff. 122; Mellk Aff. 7.)

Plaintiffs' counsel describe a series of extraordinary discovery issues that followed the lifting of the bankruptcy stay. Longobardi Aff. 124-80.) These included, inter alia, Vazquez's refusal to testify at a deposition in January 2014 (Longobardi Aff. 138-41), his failure to appear at a deposition in March 2014 (Longobardi Aff. 143-44), further failures to appear at deposition by defendants' on-site managers in March and April 2014 (Longobardi Aff. 162-68), and unsuccessful attempts to depose Vazquez's assistant Milagros De Jesus (Longobardi Aff. 170-74). These also included efforts to depose as non-party witnesses the New Jersey-based manufacturer of detergent products used by defendants, in response to defendants' claim that the did not apply because they used only local products. (Longobardi Aff. 177-80.)

March 2014, defense counsel informed the Court

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Court." that defendant Vazquez was suffering from a mental condition that made Vazquez "difficult to and sought a six month adjournment of this case. (Dkt. No. 95: 3/20/14 Memo Endorsed Letter; Longobardi Aff. 148.) At a conference on April 3, 2014, plaintiffs requested an independent medical examination of Vazquez, which the Court ordered on defendants' consent. (Longobardi Aff. 150; see Dkt. No. 102: 4/3/14 Hearing Tr.) Plaintiffs retained psychiatrist Stuart B. Kleinman. (Longobardi Aff. 151.) Dr. Kleinman examined Vazquez for six and half hours over three days--May 28, May 29, and June 5, 2014. (Longobardi Aff. 156.) Dr. Kleinman also reviewed approximately pages of Vazquez's medical records, as well as a "detailed, 23-page memorandum concerning the standard for the legal determination of mental competency in civil actions in the Second prepared by Longobardi, "background information concerning the Action and the bankruptcy proceedings, and all statements and testimony by Mr. (Longobardi Aff. 152-53, 157.)

June 26, 2014, Dr. Kleinman issued a written report finding Vazquez "competent to proceed in this (Longobardi Aff. 158-59.)

Following the lifting of the bankruptcy stay, plaintiffs' counsel remained extensively involved in defendants' bankruptcy proceedings by:

(a) participating in the formation of a committee of unsecured creditors of the Defendants and participating in the meeting of the creditors of the Car Wash Defendants pursuant to Section 341(a) of the Bankruptcy Code on December 11, 2013; (b) filing a motion to extend the deadlines to file a proof of claim or to file a complaint to determine dischargeability of certain debts; (c) participating in the meeting of creditors of Mr. Vazquez pursuant to Section 341(a) of the Bankruptcy Code on

February 12, 2014; and (d) participating in the filing of a motion to appoint Chapter 11 Trustees for the Defendants. (Longobardi Aff. 182; see also id. 183-210.) According to plaintiffs, they "were the Defendants' only creditors (other than state and federal taxing authorities), [they] had a real interest in continuing to participate in the bankruptcy proceedings, so that [they] would be aware of any conduct, testimony or documents that could potentially impact either the prosecution of the FLSA Action, or the future recovery of any judgments against the Defendants in the Bankruptcy (Longobardi Aff. 181.) Defendants, however, argue that plaintiffs' involvement in the bankruptcy proceedings after the lifting of the automatic stay was unnecessary. (J.V. Car Wash Fee Br. at 17-19.)

In July 2014, Wendy Mellk was retained by defendants'

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allowed.'") Bankruptcy Trustees as special litigation counsel. (Mellk Aff.

9.) thereafter, settlement discussions began. (Dkt. No. 149: Arenson Aff. 24-31; Mellk Aff. 10-13.) or about November 14, 2014, plaintiffs' counsel submitted plaintiffs' half of the Pretrial to defense counsel. (Longobardi Aff. 223; Arenson Aff. 31.) November 19, 2014, defendants served all eighteen plaintiffs individual offers of judgment totaling approximately $1.2 million. (Longobardi Aff. 223; Arenson Aff. 32; Mellk Aff. 14.)

December 3, 2014, plaintiffs sent eighteen individual written responses to the offers of judgment; two plaintiffs accepted and sixteen rejected the offers. (Arenson Aff. 33; Mellk Aff. 15.)

December 23, 2014, with my assistance, the parties agreed to settle plaintiffs' claims for (Dkt. No. 129: 12/23/14 Settlement Conf. Tr.; Longobardi Aff. 225; Arenson Aff. 37; Mellk Aff. 16.) The parties agreed to negotiate plaintiffs' attorneys' fees at a later date or, if no agreement could be reached, that the Court would decide the amount of fees. Settlement Conf. Tr.; Mellk Aff. 17; Arenson Aff. 37.) R&R at 2-6, Dkt. No. 166 (alterations in R&R) (footnotes omitted)

As the parties were unable to reach an agreement, plaintiffs moved for an award of $1,404,456.23 in attorney's fees and $113,594.85 in costs. That included a voluntary eight- percent reduction from what plaintiffs' counsel alleged to be their actual fees. Plaintiffs reserved the right to file a supplemental application for the expenses incurred in making the fee application. Weyant v. 198 F.3d 311, 316 (2d Cir. 1999) ("Further, a reasonable fee should be awarded for time reasonably spent in preparing and defending an application for § 1988 fees. As a general matter, such 'motion costs should be granted whenever underlying costs are (citations

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"some omitted) (quoting Valley Disposal, Inc. v. Cent. Vt. Solid Waste Mgmt. Dist., 71 F. 3d (2d Cir. 1995)).

In response to defendants' opposition, plaintiffs conceded that certain attorney hours should have been billed at a paralegal rate, that certain time billed at a paralegal rate was in fact non-billable clerical time, and that the time spent computing plaintiffs' damages should be reduced by 95 hours. In all, plaintiffs reduced their requested fees by and their requested costs by $1,544.49.

I referred the motion to Judge Peck for a report and recommendation. Judge Peck held that plaintiffs are the prevailing parties and, as such, are entitled to an award of reasonable attorney's fees and costs under the Fair Labor Standards Act, 29 § 216(b), and New York Labor Law § 663(1). He also found that plaintiffs' counsel's per hour rate was generally reasonable; however, "some of Longobardi's entries beyond what plaintiffs concede reflect work that should have been billed at a lower associate or paralegal rate," and

of plaintiffs' billing entries involve excessive time given the task at hand." R&R at 18, 28. As a result, Judge Peck recommended reducing plaintiffs' fees by an additional ten percent, which results in a fee

award of $1,214,431.86.

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This figure differs by $16.20 from the amount recommended by Judge Peck due (continued on next page)

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DISCUSSION

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Judge Peck recommended granting plaintiffs' application for costs, as amended, in full for an additional $112,050.36.

"A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 § 636(b) (1). "To the extent, however, that the party makes only conclusory or general arguments, or simply reiterates the original arguments, the Court will review the Report strictly for clear error." v. Gandhi Eng'g, Inc., 999 F. 2d 629, 632 (S.D.N.Y. (quoting IndyMac Bank, v. Nat'l Settlement Agency, Inc., No. Civ. 6865 (GWG), WL

at *1 (S.D.N.Y. Nov. 3, Defendants object to the portions of Judge Peck's report and recommendation that found plaintiffs' counsel's billing rate of per hour to be reasonable and that allowed plaintiffs to recover for work performed in the bankruptcy case after the automatic stay was lifted.

Plaintiffs' Counsel's Hourly Rate Defendants argue that Judge Peck "ignored an abundance of recent Southern District of New York wage-and-hour cases

to a minor transcription error in the report and recommendation. Compare Longobardi Reply Decl.

41, Dkt. No. 159 (stating plaintiffs' amended attorney's fees request as with R&R at 1 (stating the amount as

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Pret (USA) Civ. 6094 (PAE), 2014 4670870 (S.O.N.Y. Sept. 2014) Castellanos Cmty. Corp., Civ. 3061 2014 10, 2014) "not "the Cookie Panache

Civ. 6071 2014 20, 2014) FLSA

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Civ. (VMS), 2013 Sept. 2013) "with disapproving of an hourly rate of Defs.'s to R&R at 1, Dkt. No. 167. "But a reasonable hourly rate is not itself a matter of binding precedent. Rather, under established caselaw, a reasonable hourly rate is the 'prevailing market rate,' i.e., the rate 'prevailing in the relevant community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" Farbotko v. Clinton Cnty., 433 F.3d (2d Cir. (brackets omitted) (quoting Blum v. Stenson, 465

8 8 6, 8 9 6 & n. 11, 4 Ct. 15 41, 15 4 7 & n. 11 (19 8 4)) . The cases cited by defendants disapproving of a per hour rate are different because they involve less experienced attorneys or less complicated litigation.

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Watkins v. No. 12 4653 WL 476867, at *1, *4 (S.D.N.Y. Feb. 5, (attorney had years' experience and presented no evidence of an actual rate; issues were neither novel nor complex); Easterly v. Transp. No. 11 6365 (VB), WL 337565, at *1-2, (S.D.N.Y. Jan. 23, (default judgment in "straightforward," single-plaintiff wage-and-hour case); Tackie v. Keff Enters. No. 14

WL 4626229, at *1, *7 (S.D.N.Y. 16, years' experience; default judgment in single-plaintiff case); Trinidad v. A Manger Ltd., No. 12 WL 14, (16 years' experience); v. Mid Bronx Hous. Mgmt.

No. 13 (JGK), WL 2624759, at *6 (S.D.N.Y. June (default judgment in a complicated" single-plaintiff case, where issues of liability were not complex"); Aguilera v. ex rel. Between the Bread, Ltd., No. 13 (KBF), WL 2115143, *1 (S.D.N.Y. May (16 years' experience; two-plaintiff case that settled seven months after filing); Liang Huo v. Go Go 9th Ave., 13

6573 (KBF), WL 1413532, at *7-8 (S.D.N.Y. Apr. years' experience; default judgment in single-plaintiff case, where the complaint and other documents were pro forma," and highly doubts whether plaintiff's counsel spent anytime legitimately researching the law"); Juarez v. Precision Apparel, Inc., 12 2349 (ARR) WL 5210142, at *13-14 (E.D.N.Y. 13, (11 years' experience; case minimal (continued on next page)

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2001) attorneys Arenson and Laura Longobardi are seasoned litigators, each having 28 years' experience. They have submitted affidavits and retainer agreements showing that

per hour is the rate they actually charge their clients in employment matters when not working on a contingency-fee basis.

Rozell v. Ross-Holst, 576 F. 2d 527, 544 (S.D.N.Y.

(The actual rate charged by counsel to paying clients "is obviously strong evidence of what the market will bear."). Plaintiffs' have also submitted affidavits from five experienced

complexity that did not require exceptional expertise or experience"); K.L. v. Warwick Valley Cent. Dist., No. 12 Civ. 631 (DLC), WL 4766339, at *8 (S.D.N.Y. 5, 2013), aff'd, 584 F. App'x 17 (2d Cir. 2014) (single-plaintiff case that "involved an early settlement, and presented an utterly straightforward IDEA grievance"); Agudelo v. E&D LLC, No. 12 Civ. (HB), WL 1401887, at *1-2 (S.D.N.Y. Apr. 4, 2013) (15 years' experience; three-plaintiff, "relatively straightforward FLSA-NYLL case," in which the plaintiffs and the attorney's fees were paid out of settlement fund); Greathouse v. Inc., No. 11 Civ. 7854 (PAE) (GWG), WL 3871523, at *11 (S.D.N.Y. 7, 2012), R&R adopted as modified, WL 5185591 (S.D.N.Y. 19, 2012), vacated and remanded, 784 F.3d (2d Cir. 2015) (nine years' experience; default judgment in single-plaintiff case, where the Court noted that case was not unusually complex; that it did not demand great resources; that it involved no contested litigation"); Garcia v. Giorgio's Brick & Wine Bar, No. 11 Civ. 4689 (FM), WL 3339220, at *7 (S.D.N.Y. Aug. 15, 2012), R&R adopted, WL 3893537 (S.D.N.Y. 7, 2012) (13 years' experience, and attorney did indicate that per hour] is the rate at which other clients customarily compensate default judgment that "proceeded from filing to judgment with only one uncontested order to show cause proceeding in the interim"); Carrasco v. W. Vill. Ritz Corp., No. 11 Civ. 7843 (DLC) (AJP), WL 2814112, at *7 (S.D.N.Y. July 11, 2012), R&R adopted, WL 3822238 (S.D.N.Y. 4, 2012) (default judgment in two-plaintiff case and the motion papers were "largely 'boiler plate' used by plaintiffs' counsel in other cases"); Gurung v. Malhotra, 851 F. 2d 583, 586 (S.D.N.Y. 2012) (default judgment in single-plaintiff case); Wong v. Hunda Glass Corp., No. Civ. (RLE), WL 3452417, at *3-4 (S.D.N.Y. 1, (12 years' experience and "no evidence of actual rates charged to clients or awarded by a court"; "uncomplicated, one plaintiff case"); Shannon v. Fireman's

Fund Ins. Co., 156 F. 2d 279, 285 (S.D.N.Y. (single-plaintiff case).

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-10- employment litigators (including a former federal judge) each of whom attest that per hour is a reasonable rate for attorneys of Mr. Arenson and Ms. Longobardi experience in multi plaintiff employment litigation like this case. See R&R at 14 (collecting cases in which courts considered affidavits from experienced attorneys in determining the reasonableness of requested hourly rates).

Defendants also contend that plaintiffs' counsel's hourly rate should be set at the low end of what wage-and-hour practitioners command in this district because litigation has been a fairly straightforward wage-and-hour to Pls.' Appl. for Att'ys' Fees at 2-3, Dkt. No. 156; see also Defs.' to R&R at 5 n.3 ("Defendants reiterate that the FLSA litigation here concerned a 'straightforward' application of existing law With all due respect to defendants' current attorneys (special litigation counsel to the defendants' chapter 11 bankruptcy trustees, who came late to this litigation), in the years from its filing in until their arrival this has been neither a normal nor a straightforward case.

With eighteen individual plaintiffs, each with their own employment histories, who worked at four different car washes and eleven defendants, this was a complex case. In addition, in their efforts to derail this litigation, defendants made a

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"[i]n variety of outlandish claims, forcing plaintiffs' counsel to grapple with factual and legal issues unusual in typical, straightforward wage-and-hour cases.

For example, defendants claimed that plaintiffs were not employees, but "criminal delinquents" who had taken over defendants' car washes and were running them on their own account. Mr. Vazquez fired one attorney on the eve of his deposition and later filed a bankruptcy petition half an hour before he was to sit for a rescheduled deposition. Defendants moved to dismiss the case on the grounds that the FLSA did not apply because they were not "engaged in commerce" because they did

not use any products from outside of New York State (an assertion that was flatly contradicted by Mr. Vazquez's own testimony in the bankruptcy case). Defendants wrote to the Attorney for the Southern District of New York accusing plaintiffs of threats of violence to witnesses, requiring responses by plaintiffs' counsel.

In a typical wage-and-hour case, the standard for determining a party's mental competency is not at issue, because

the 'typical' FLSA case, the defendant does not feign mental illness to try to stall the case, as Vazquez did here," which required plaintiffs to obtain an independent medical examination. R&R at 32.

The complexity, and patient, scholarly management of this

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3,000 case support a finding that plaintiffs' counsel's requested hourly rate is reasonable.

Furthermore, the degree of success obtained by plaintiffs' counsel, which the Supreme Court has described as "the most critical factor in determining the reasonableness of a fee award," Torres v. Gristede's Operating Corp., 519 F. App'x 1, 5 (2d Cir. 2013) (quoting Farrar v. Hobby, 114, 113

Ct. 566, 574 (1992)), is striking.

The eighteen plaintiffs received $1.65 million, an average recovery of over per plaintiff. According the undisputed declaration of Professor Samuel Estreicher of New York University School of Law, the average settlement in a class action is $5,830 per plaintiff, and the "results achieved by Plaintiffs' counsel in this case also marks the highest per claimant recovery (by far) that has been secured in the low-pay car wash industry." Estreicher Decl. 7, Dkt. No. In sum, plaintiffs' counsel's steady, careful, and relentless work obtained an extraordinary degree of success.

Finally, defendants contend that Judge Peck "failed to consider that Plaintiffs would not be willing to

pay as an hourly rate for two billing attorneys spending approximately

hours to litigate, considering such an hourly rate for such a high amount of time contravenes what a reasonable party would want to minimally spend necessary to litigate the case

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$500 effectively." Defs.' to R&R at 1. That claim is bold indeed, considering that Judge Peck found (and defendants do not challenge his finding) that "the normal difficulties and expenses involved in prosecuting a multi-plaintiff case were multiplied considerably by the tactics of Defendant Jose Vazquez whose tactics--all of which were designed to delay, distract and derail this litigation--imposed a significant burden on this firm and on the Plaintiffs." R&R at 3 (brackets and ellipsis omitted). To reduce plaintiff's attorney's fee award because, through his obstructive and delaying conduct, Mr. Vazquez was successful in dramatically increasing plaintiffs' counsel's workload would contravene the purpose of the and New York labor law fee-shifting provisions, which are intended to encourage attorneys to take on meritorious cases. Perdue v. Kenny A. ex rel. Winn, 559 542, 552, Ct. 1662, 1672

("First, a 'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case."). That objection is overruled.

Having reviewed the record and taking into account Judge Peck's recommended ten-percent reduction of fees, plaintiffs' counsel's requested per hour rate is reasonable.

Attorney's Fees for Work in the Bankruptcy Case Defendants object to awarding fees for work performed by plaintiffs' counsel in the bankruptcy case after the automatic

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2013 stay was lifted on November 26, on the grounds that that work was not necessary to the prosecution of their claims in this case.

A district court may award attorney's fees incurred in another court for work necessary for the resolution of the claims before it:

Finally, we find no merit to PAJ's argument that the district court abused its discretion by awarding Yurman fees for time spent litigating PAJ's declaratory judgment action in a Texas district court. The Texas action was based on the same facts and encompassed the same issues, and resolution of the claims in the Texas court essential to the resolution of the claims in this Yurman II, 125 F. 2d at 56. Furthermore, the Texas action was an improper attempt by PAJ to divest Yurman of its rightful forum choice. Yurman Design, Inc. v. Inc., 29 F. App'x 46, 49 (2d Cir.

counsel has provided a detailed and uncontested account of the work they performed in the bankruptcy case and the reasons that they needed to remain involved to safeguard their clients' interests. See Longobardi Decl. 181-201, Dkt. No. 151. As Judge correctly noted in his report:

For example, Longobardi's appearance at a February meeting of Vazquez's creditors is reasonable given that

was giving sworn testimony at this meeting on matters implicated in the Action at a time when his deposition in the action was still Indeed, Vazquez's testimony at the meeting revealed existence of various books and records for the Car Wash Defendants, that were supposedly maintained at the office of the accountants for the Car Wash defendants--which had not been produced prior to the start of his Similarly, plaintiffs assert that at a December creditors meeting, Vazquez's responses to their counsel's questions about the manufacturer of some of the

CONCLUSION machinery/equipment listed on his schedules contradicted Vazquez's claims in this case that defendants were not engaged in interstate commerce. Thus, ADK's involvement in the bankruptcy proceedings was necessary for pursuing this complex case with a defendant (Vazquez) who was less than forthcoming. R&R at 26-27 (citations omitted) (quoting Longobardi Decl.

197-98).

Additionally, plaintiffs' counsel filed a motion to extend the deadline to file proof of claims or to challenge the dischargeability of defendants' debts in the Bankruptcy Court. That motion was urgent and necessary to preserve plaintiffs' rights and was due just four days after counsel for the creditors' committee was appointed. Accordingly, it was reasonable and prudent for plaintiffs' counsel in this case to perform that work.

Having reviewed the record, the time expended by plaintiffs' counsel in the bankruptcy case (as modified by their voluntary reductions and Judge Peck's further ten-percent reduction) was reasonable and necessary to protect plaintiffs' interests in this case and to achieve a fair settlement of their claims. Accordingly, defendants' objection to awarding plaintiffs' attorney's fees for the work performed in the bankruptcy case after November 26, 2013 is denied.

Plaintiff's motion for attorney's fees and costs (Dkt. No. 142) is granted, and Judge Peck's report and recommendation is

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LOUIS STANTON

U.S.D.J.

$41,400

2015), adopted, as to defendants Car Wash, Ltd., Broadway Hand Carwash Corp., Webster Hand Car Wash Corp., Harlem Hand Car Wash Corp., Bayway Hand Car Wash Corp. and Jose Vazquez, jointly and severally, to the extent of $1,214,431.86 in attorney's fees and $112,050.36 in costs.

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Plaintiffs' unopposed supplemental application for $24,445.83 in attorney's fees incurred in responding to defendants objections' to the report and recommendation is also granted for a total award of attorney's fees and costs of $1,350,928.05.

The Clerk shall close the case.

ordered. Dated: New York, New York

November 18,

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Judge Peck recommended costs be awarded pursuant to FLSA, 29 U.S.C. § 216(b), and New York Labor Law§ 663(1). R&R at 31. The recommended award includes over for the independent medical examination of Mr. Vazquez, necessitated by him "feign[ing] mental illness to try and stall the case." R&R at 32. Four days after Judge Peck issued his report and recommendation, the Second Circuit held in Gortat v. Capala Bros., 795 F.3d 292, 296-97 (2d Cir. that expert fees may not be included in an award of costs under FLSA, but that their availability under New York law is an open question. Accordingly, and as defendants did not object to Judge Peck's recommended award of costs, plaintiffs' expert fees are awarded under New York Labor Law.

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