

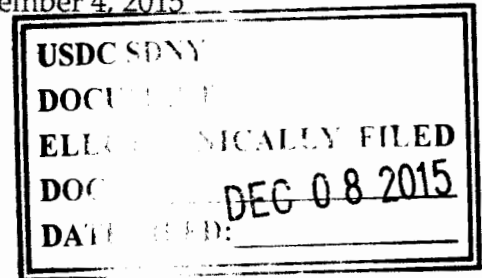
PECHMAN LAW GROUP PLLC
ATTORNEYS AT LAW

488 MADISON AVENUE
NEW YORK, NEW YORK 10022
(212) 583-9500
WWW.PECHMANLAW.COM

December 4, 2015

VIA ECF

Honorable Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007



Re: *Alcantar v. Diario de Mexico USA, Inc. d/b/a*
Diario de Mexico et al., 15 Civ. 2063 (KBF)

Dear Judge Forrest:

We represent plaintiff Virginia Maria Alvarado Alcantar ("Alcantar" or "plaintiff") in the above-referenced wage and hour matter brought pursuant to the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL"). Together with the defendants' attorneys, Daniel W. Morris of Clifton Budd & DeMaria, LLP, and pursuant to Your Honor's order dated November 20, 2015 (ECF No. 15), the parties submit this letter jointly to describe the terms of their settlement agreement, including a "breakdown of what portion of that settlement will go toward attorneys fees and the basis for those fees" (ECF No. 15).

FACTS AND PROCEDURAL HISTORY

Plaintiff commenced this action (the "Action") by filing a Complaint on March 19, 2015 (ECF No. 1). In the Complaint, plaintiff alleged that she worked as a reporter for defendants Diario de Mexico USA, Inc. and its principal, German A. Baez Gutierrez (collectively, "defendants"), from approximately March 2002 to November 2014. Plaintiff asserted that, on average, she worked sixty-five hours per workweek, but was paid a fixed weekly salary of \$600 between 2009 and 2014. Plaintiff also alleged that defendants failed to provide her with accurate wage statements at the end of each pay period and with annual wage notices. Upon these facts, plaintiff sought to recover unpaid wages and other damages arising out of defendants' alleged violations of the FLSA, the NYLL, and New York's Wage Theft Prevention Act.

Defendants filed an Answer on May 15, 2015 (ECF No. 13), in which they generally denied that they violated the FLSA or NYLL. Moreover, defendants specifically denied that defendant Baez employed plaintiff and asserted that plaintiff was an exempt employee who was not entitled to overtime wages.

Hon. Katherine B. Forrest
December 4, 2015
Page 2 of 2

The parties reviewed and produced over 30,000 pages of documents and held two informal settlement conferences, one with the plaintiff and the other with the defendants. Each conference lasted approximately three hours and helped the parties reach a settlement. The parties also had three telephone conferences with Your Honor.

THE SETTLEMENT AGREEMENT IS FAIR AND REASONABLE

The parties agree that the settlement is fair and reasonable and should be approved by the Court. The proposed settlement agreement resolves bona fide disputes over sharply contested issues, including the number of hours that plaintiff worked per workweek and whether plaintiff was an exempt employee under the FLSA and NYLL. There is serious risk to both parties should this case proceed to trial. Moreover, proceeding to trial would consume significant amounts of time and resources, including, quite possibly, the resources used to resolve this matter.

Pursuant to the agreement, defendants must pay plaintiff \$120,000.00 (the "Settlement Amount") in equal monthly installments of \$5,000.00 throughout 2016 and 2017. To protect plaintiff in the event of default, defendants will execute an Affidavit of Confession of Judgment providing for acceleration of all outstanding payments due and payment of attorneys' fees incurred in the enforcement of the settlement agreement.

After attorneys' fees and costs, Ms. Alcantar will receive \$79,665.49 of the total Settlement Payment. Pursuant to the retainer agreement between Ms. Alcantar and her attorneys, her attorneys are to receive \$40,334.51, which represents 33.3% of the Settlement Amount plus reimbursement of costs. *See, e.g., In re Lawrence*, 24 N.Y.3d 320, 339 (2014) ("Absent incompetence, deception or overreaching, contingent fee agreements that are not void at the time of inception should be enforced as written."); *see also Castaneda v. My Belly's Playlist LLC*, No. 15 Civ. 1324 (JCF) (S.D.N.Y. Aug. 17, 2015) (Francis, M.J.) (awarding plaintiffs' attorneys a one-third contingency to account for risks in litigation). In this regard, it bears noting that plaintiff's counsel's lodestar currently exceeds \$50,000.00. As such, we believe that the contingency fee in this case is fair and reasonable, particularly as it is less than the lodestar.

We thank the Court for its attention to this matter.

Respectfully submitted,

Louis Pechman

LP/gc

cc: Adam Braverman, Esq. (via e-mail and ECF)
Daniel Morris, Esq. (via e-mail and ECF)

2

Ordered
This seems like it may be reasonable but I need to see your backup (work detail) on work performed. Please submit within a week.

K.B. For
us DJ

12/8/15