

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

USDC SDNY
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ELECTRONICALLY FILED
DOC#:
DATE FILED: Dec. 10, 2021

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LUIS ZHICAY,

Plaintiff,

-against-

SALAS CORPORATION CORP ET AL.,

Defendants.
----- x

1:21-cv-3795 (ALC)

**ORDER DENYING
SETTLEMENT**

ANDREW L. CARTER, JR., United States District Judge:

The Court is in receipt of the proposed settlement agreement filed by the parties on November 2, 2021. ECF No. 30. The Court has reviewed the settlement agreement, as well as the accompanying fairness motion, as required by *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015). The Court declines to approve the settlement in its current form.

Attorneys’ fees that total less than or equal to one-third of the settlement sum are generally approved by courts in this district, however, the district court must still independently ascertain the reasonableness of a fee award. *Run Guo Zhang v. Lin Kumo Japanese Rest. Inc.*, No. 13 Civ. 6667 (PAE), 2015 WL 5122530, at *4 (S.D.N.Y. Aug. 31, 2015); *see also Hernandez v. Boucherie LLC*, No. 18 Civ. 7887 (VEC), 2019 WL 3765750, at *4 (S.D.N.Y. Aug. 8, 2019) (quoting *Lazo v. Kim’s Nails at York Ave., Inc.*, 17 Civ. 3302 (AJN), 2019 WL 95638, at *2 (S.D.N.Y. Jan. 2, 2019)). “Where a proposed settlement of FLSA claims includes the payment of attorney’s fees, the court must also assess the reasonableness of the fee award.” *Wolinsky v. Scholastic Inc.*, 900 F.Supp.2d 332, 336 (S.D.N.Y. 2012). “The fee applicant must submit adequate documentation supporting the requested attorneys’ fees and costs.” *Fisher v. SD Prot. Inc.*, 948 F.3d 593, 600 (2d Cir. 2020). Reasonableness can only be determined after review of “contemporaneous billing

records documenting, for each attorney, the date, the hours expended, and the nature of the work done.” *Wolinsky*, 900 F.Supp.2d at 332.

Courts in this Circuit “have consistently held that they have the authority to review an attorneys-fee provision in a settlement agreement for reasonableness, regardless of whether the fee represents the share agreed upon in a contingency-fee arrangement.” *Rubio v. BSDB Mgmt., Inc.*, --- F.Supp.3d ----, No. 19 Civ. 11880 (VSB), 2021 WL 3631122, at *3 (S.D.N.Y. July 8, 2021) (quoting *Hernandez* 2019 WL 3765750, at *3). It is inapposite whether the proposed amount is one-third or less of the settlement sum. *Id.* (“Even when a plaintiff has entered into a contingency-fee arrangement with his attorneys, and even when the proposed fees do not exceed one third of the total settlement amount, courts in this circuit use the lodestar method as a cross check to ensure the reasonableness of attorneys’ fees.” (quoting *Hernandez* 2019 WL 3765750, at *4)).

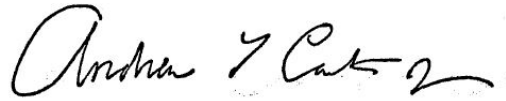
Per the Settlement Agreement and fairness motion, the proposed attorney’s fees are \$12,500, a one-third contingency fee of the total settlement amount of \$37,500, of which Plaintiff will receive \$25,000. ECF No. 30 at 2,4. Plaintiff’s counsel states that the attorneys’ fees are “fair and reasonable,” and the 33.33 percent rate was agreed upon by Plaintiff and counsel as memorialized in a retainer agreement. *Id.* at 4. Plaintiff’s counsel, however, has provided no supporting documentation for the proposed fees. Accordingly, I cannot approve the request for attorney’s fees.

In light of these concerns, the Court **DENIES** without prejudice the request to approve the proposed settlement. The parties are hereby **ORDERED** to submit a revised fairness letter and proposed settlement agreement with adequate documentation to cure this deficiency no later than

December 20, 2021. Additionally, the parties have informed the Court that Aristeo Lozada is the correct name of the defendant presently identified on the docket as Ariesto Lopez. The Clerk of Court is respectfully directed to update the docket accordingly.

SO ORDERED.

Dated: December 10, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written in a cursive style.

ANDREW L. CARTER, JR.
United States District Judge