

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**DAFINIS FILHO, RAQUEL ERNEST and
CHANTEL LYNCH on behalf of themselves and all
others similarly situated,**

Plaintiffs,

-against-

OTG Management, LLC,

Defendant.

Case No. 19-CV-8287 (SN)

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT,
APPOINTMENT OF CLASS COUNSEL, AND APPROVAL OF PLAINTIFFS'
PROPOSED NOTICE OF SETTLEMENT**

The above-entitled matter came before the Court on Plaintiffs' Motion for Preliminary Approval of Class and Collective Action Settlement, Appointment of Class Counsel, and Approval of the Proposed Notice of Settlement ("Motion for Preliminary Approval"). Defendant agreed, for settlement purposes only, not to oppose the motion.

1. Based upon the Court's review of the Plaintiffs' Memorandum of Law in Support of their Motion for Preliminary Approval, the Declaration of Molly A. Brooks ("Brooks Decl."), and all other papers submitted in connection with Plaintiffs' Motion for Preliminary Approval, the Court grants preliminary approval of the settlement memorialized in the Settlement Agreement and Release ("Settlement Agreement") between Named Plaintiffs Dafinis Filho, Raquel Ernest, and Chantel Lynch ("Plaintiffs") and OTG Management, LLC ("Defendant"), attached to the Brooks Decl. as Exhibit 1, and "so orders" all of its terms.

2. The Court concludes that the proposed Settlement Agreement is within the range of possible settlement approval such that notice to the Class is appropriate.

3. The Court finds that the Settlement Agreement is the result of extensive, arms' length negotiations by counsel well-versed in the prosecution of wage and hour class and collective actions. The assistance of private mediator Stephen P. Sonnenberg and of Magistrate Judge Sarah Netburn reinforces that the Settlement Agreement is non-collusive.

4. For settlement purposes only, the Court provisionally certifies the following class under Fed. R. Civ. P. 23(e):

- (A) Opt-Out Class Members include all Federal 216(b) Claimants, Rule 23 New York Class Members, and Rule 23 New Jersey Class Members, as defined below:
 - i. Federal 216(b) Claimants means all current and former Tipped Workers employed by a Defendant Entity at LaGuardia Airport, John F. Kennedy Airport, and/or Newark Liberty Airport any time between September 6, 2016 to February 1, 2023, and who filed a Consent to Join the FLSA collective.
 - ii. Rule 23 New York Class Members means all current and former Tipped Workers employed by a Defendant Entity at LaGuardia Airport and/or John F. Kennedy Airport any time between September 6, 2013 to February 1, 2023, and who meet any one of the following criteria: (a) did not sign an arbitration agreement with Defendant; (b) signed a retainer agreement with Plaintiffs' Counsel to bring their claims in arbitration; or (c) are Federal 216(b) Claimants.
 - iii. Rule 23 New Jersey Class Members means all current and former tipped workers employed by a Defendant Entity at Newark Liberty Airport any time between September 6, 2013 to February 1, 2023, and who meet any one of the following criteria: (a) did not sign an arbitration agreement with Defendant; (b) signed a Retainer agreement with Plaintiffs' Counsel to bring their claims in arbitration; or (c) are Federal 216(b) Claimants.
- (B) Opt-In Class Members include all current and former Tipped Workers employed by a Defendant Entity at LaGuardia Airport, John F. Kennedy Airport, and/or Newark Liberty Airport any time between September 6, 2013 to February 1, 2023, and (a) who did not file a Consent to Join the FLSA collective or (b) who signed an arbitration agreement with OTG and have not signed a retainer agreement with Plaintiffs' Counsel to bring their claims in arbitration. These individuals will be subject to the Opt-In Claims Process.

5. For settlement purposes only, Plaintiffs meet all of the requirements for class certification under Federal Rule of Civil Procedure 23(a) and (b)(3).

6. For settlement purposes only, the Court appoints Outten & Golden LLP as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g).

7. The Court approves, as to form and content, proposed Notice and Claim Form, which are attached as Exhibits A through I to the Settlement Agreement and Release, except that all references to District Judge Andrew L. Carter, Jr. or his initials should be removed. This includes all captions and paragraph 2 of the Court-Authorized Notices.

8. The Court finds that the procedures for notifying the Class about the Settlement as described in the Settlement Agreement provide the best notice practicable under the circumstances and therefore meet the requirements of due process, and directs the mailing of the Notice in accordance with the Settlement Agreement.

9. The Court approves Analytics Consulting LLC as the Settlement Administrator.

10. Within 10 days following the date of this Order, Defendants will provide the Settlement Administrator and Class Counsel with a list, in electronic form, of all Class Members' names, Last Known Addresses, Last Known Email Address, Last Known Phone Number, Social Security Numbers, and the dates of employment during the Relevant Period. They will provide the same information to Class Counsel except for social security numbers.

11. Within eleven (11) days of receiving the information described in Paragraph 9 of this Order, the Settlement Administrator shall mail, via First Class United States mail, postage prepaid, the appropriate Notice to all Class Members.

12. Opt-Out Class Members will have 60 days from the date the Notice is mailed to opt out of the settlement or object to it, and 30 days from any remailing.

13. Opt-In Class Members will have 60 days from the date the Notice is mailed to submit a Claim Form, and 30 days from any remailing.

14. Plaintiffs will file their Motion for Final Approval of Settlement at least seven (7) days prior to the fairness hearing. Class Counsel will also file their motion for attorneys' fees,

litigation costs and expenses, and Service Awards at least seven (7) days prior to the fairness hearing.

15. The Court will hold a final fairness hearing on Monday, October 23, 2023, at 2:30 p.m. at the Thurgood Marshall Courthouse, United States District Court for the Southern District of New York, 40 Foley Square, New York, New York 10007, Courtroom 219.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

Dated: June 13, 2023
New York, New York