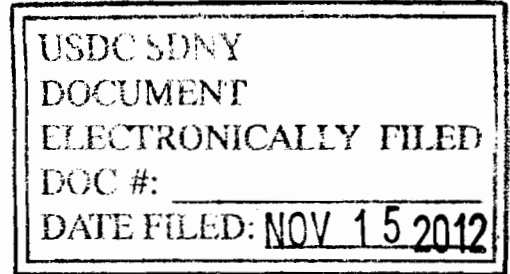


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SUSAN DULING, MARGARET ANDERSON, and
LAKEYA SEWER, on behalf of themselves and all
others similarly situated,

06 Civ. 10197 (LTS)(HBP)

Plaintiffs,

-against-

GRISTEDE'S OPERATING CORP.; RED APPLE
GROUP, INC., D/B/A/ GRISTEDE'S; GRISTEDE'S
FOOD INC.; GRISTEDE'S DELIVERY SERVICE,
INC.; GRISTEDE'S FOODS NY, INC.; GRISTEDE'S
NY, LLC; NAMDOR, INC.; and JOHN CATSIMATIDIS,

Defendants.

~~PROPOSED~~ **ORDER GRANTING
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,
CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT
OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL, AND APPROVAL OF THE
PROPOSED NOTICE OF SETTLEMENT AND CLASS ACTION SETTLEMENT
PROCEDURE**

The above-entitled matters came before the Court on Plaintiffs' Motion for Preliminary Approval of Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiffs' counsel as Class Counsel, and Approval of Plaintiffs' Proposed Notice of Settlement and Claim Form and Class Action Settlement Procedure ("Motion for Preliminary Approval"), ECF No. 164.

I. Preliminary Approval of Settlement

1. Based upon the Court's review of the Motion for Preliminary Approval and with the modifications requested in the Court's September 17, 2012 Order, the Court grants preliminary approval of the settlement memorialized in the Term Sheet, attached to the

Declaration of Rachel Bien, ECF No. 166 (“Bien Decl.”) as Exhibit B.

2. The Court concludes that the proposed Term Sheet is within the range of possible settlement approval, such that notice to the Class is appropriate. *See In re Traffic Exec. Ass’n*, 627 F.2d 631, 634 (2d Cir. 1980); *In re State Street Bank & Trust Co. ERISA Litig.*, No. 08 Civ. 0265, 2009 WL 3458705, at *2 (S.D.N.Y. Oct. 28, 2009); *Capsolas v. Pasta Resources, Inc.*, No. 10-5595, 2012 WL 1656920, at *3-4 (S.D.N.Y. May 9, 2012).

3. The Court finds that the Term Sheet is the result of extensive, arm’s length negotiations by counsel well-versed in the prosecution of employment class actions. *See Duling v. Gristede’s Operating Corp.*, 267 F.R.D. 86, 99 (S.D.N.Y. 2010); *Capsolas*, 2012 WL 1656920, at *1.

4. The assistance of an experienced mediator reinforces that the Term Sheet is non-collusive. *Capsolas*, 2012 WL 1656920, at *1.

II. Conditional Certification of the Proposed Rule 23 Settlement Class

5. The Court finds that all of the requirements of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure are satisfied for settlement purposes.

6. Plaintiffs satisfy Fed. R. Civ. P. 23(a)(1) because there are approximately 2,527 class members and, thus, joinder is impracticable. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (“[N]umerosity is presumed at a level of 40 members”); *Duling*, 267 F.R.D. at 96 (numerosity satisfied by a class of 668 class members).

7. Plaintiffs satisfy Fed. R. Civ. P. 23(a)(2) because they and the class members share common issues of fact and law, including: (1) whether Gristede’s steered women who applied to work in one of its approximately 40 New York supermarkets into part-time, dead-end cashier jobs – with little or no prospect for transfers or promotions into management-track

positions; and (2) whether Gristede's condoned a well-established culture of systematic discriminatory treatment of female employees which prevented them from obtaining promotions into higher-paying positions. *Duling*, 267 F.R.D. at 96.

5. These alleged discriminatory violations – involving common operative facts stemming from corporate policies that affected the class members in the same way – are sufficient to meet Rule 23(a)'s commonality factor. *Duling*, 267 F.R.D. at 96 (commonality satisfied by “evidence of steering or channeling practices at the initial hiring stage, lack of hiring and promotion standards having the purpose or effect of protecting against intentional or unintentional sex discrimination, and data showing statistically significant disparities in hiring into job categories and in promotion and resulting compensation rates”).

6. Plaintiffs satisfy Fed. R. Civ. P. 23(a)(4) because there is no evidence that the named Plaintiffs' and the class members' interests are at odds. *See Duling*, 267 F.R.D. at 97-98 (“The interests of the proposed class representatives, *Duling*, *Anderson* and *Sewer*, are well aligned with those of the absent class members.”).

7. In addition, Class Counsel, *Outen & Golden LLP*, “have substantial experience prosecuting and settling employment class actions[.]” *Westerfield v. Wash. Mut. Bank*, No. 06 Civ. 2817, 2009 WL 6490084, at *3 (E.D.N.Y. June 26, 2009); *Duling*, 267 F.R.D. at 99 (appointing *Outen & Golden LLP* as class counsel and finding them “experienced and well qualified to conduct the instant [Title VII class action] litigation”).

8. Plaintiffs also satisfy Rule 23(b)(3). Common factual allegations and a common legal theory predominate over any factual or legal variations among class members. *See Easterling v. Conn. Dep't of Corr.*, 08 Civ. 826, 2011 WL 5864829, at *8 (D. Conn. Nov. 22, 2011) (holding that individual questions regarding class member status, qualifications, and

mitigation were less substantial than the issues that were subject to generalized proof, including whether the challenged physical fitness test had a disparate impact on female applicants; whether that impact was justified by business necessity; the total amount of back pay; the rate at which those women would have been paid; the total number of priority hiring slots that should be awarded, if any; and the total amount of front pay); *United States v. City of New York*, 276 F.R.D. 22, 48-49 (E.D.N.Y. 2011). Class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually. *See Capsolas*, 2012 WL 1656920, at *2.

9. The Court provisionally certifies the following class under Fed. R. Civ. P. 23(e), for settlement purposes only (“Settlement Class”):

all women, except for those who opt out, who worked for Gristede’s for at least 90 days in one or more of its stores in New York between November 2, 2004 and the date on which the Court grants preliminary approval of the settlement.

III. Appointment of Plaintiffs’ Counsel as Class Counsel

10. The Court appoints Outten & Golden LLP as Class Counsel because they meet all of the requirements of Fed. R. Civ. P. 23(g). *See Duling*, 267 F.R.D. at 99 (“the Court is persuaded, and Defendants do not dispute, that Plaintiffs’ counsel are experienced and well qualified to conduct the instant litigation”).

11. Outten & Golden did substantial work identifying, investigating, litigating, and settling Plaintiffs’ and the class members’ claims, have years of experience prosecuting and settling employment class actions, and are well-versed in Title VII law and in class action law. *See, e.g., Duling*, 267 F.R.D. at 99; *Westerfield*, 2009 WL 6490084, at *3.

12. The work that Class Counsel have performed both in investigating, litigating, and

settling this case demonstrates their commitment to the class and to representing the class's interests.

IV. Notice & Claim Form

13. The Court approves the proposed Court-Authorized Notice ("Notice") and Claim Form, attached as Exhibit 4 to the Supplemental Declaration of Rachel Bien, ECF No. 169, and as Exhibit D to the Bien Decl., respectively, and directs their distribution.

14. The contents of the Notice fully comply with due process and Federal Rule of Civil Procedure 23.

15. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), the notice must be:

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

16. The Notice satisfies each of these requirements and adequately puts Rule 23 Class Members on notice of the proposed settlement. *See, e.g., In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (class notice "need only describe the terms of the settlement generally"); *Capsolas*, 2012 WL 1656920, at *1.

17. The Notice is appropriate because it describes the terms of the settlement, informs the class about the allocation of attorneys' fees, and provides specific information regarding the date, time, and place of the final approval hearing. *Capsolas*, 2012 WL 1656920, at *3.

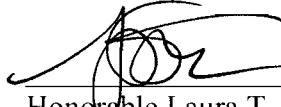
V. Class Action Settlement Procedure

18. The Court hereby adopts the following settlement approval process:
- a. Within 30 days of the Final Approval Order (but no earlier than January 1, 2013), Defendants will deposit \$950,000 into an escrow account administered by the claims administrator. Defendants will also submit \$500,000 in fully redeemable cash certificates for products sold at Gristede's stores to the claims administrator for distribution to class members.
 - b. Within 10 days of the Court's grant of preliminary approval, the claims administrator will mail the Notice and Claim Form to class members.
 - c. Class members will have 45 days after the date the Notice is mailed to opt out of or object to the settlement. Class members will have 60 days to return a Claim Form after the date the Notice is mailed.
 - d. No sooner than 100 days of the date of this Order, the Court will hold a final fairness hearing on March 15, 2013 at 3:00 p.m. at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, in Courtroom 11C.
 - e. Plaintiffs will file Motions for Final Settlement Approval and Service Payments ("Final Approval Motions") no later than 21 days before the fairness hearing. Plaintiffs must file any class member objections and requests to speak at the fairness hearing at the time that they file the Final Approval Motions. The Final Approval Motions shall include a mechanism for judicial resolution of any claims that remain disputed and a provision for filing a final schedule of distributions.
 - f. At least 7 days before the fairness hearing, Plaintiffs shall file all objections and opt-out forms received by the claims administrator.
 - g. Defendants shall file any opposition to the Final Approval Motions no later than 7 days before the fairness hearing. Plaintiffs shall file any reply to the Final Approval Motions no later than 3 days before the fairness hearing.
 - h. After the fairness hearing, if the Court grants the Final Approval Motions, the Court will issue a Final Order and Judgment. If no party appeals the Court's Final Order and Judgment, the "Effective Date" of the settlement will be 30 days after the Court enters its Final Order and Judgment.
 - i. If an individual or party appeals the Court's Final Order and Judgment, the "Effective Date" of Settlement shall be the day after all appeals are finally

resolved in favor of final approval and the time for any further appeal, rehearing, or reconsideration has expired.

- j. The Court shall maintain jurisdiction over the case to oversee implementation of the injunctive relief and to resolve Plaintiffs' motion for attorneys' fees and costs, which they shall submit within 45 days of the Effective Date. At that time, Plaintiffs may request permission to submit a supplemental attorneys' fees and cost application at the conclusion of the case.
- k. The claims administrator will disburse settlement checks to class members, Court-approved attorneys' fees and costs, and Court-approved service awards within 21 days of (a) receipt by the claims administrator of a final list approved by Class Counsel, including dates of employment; or (b) the Effective Date or January 31, 2013, whichever is later.
- l. The parties shall abide by all terms of the Term Sheet.

It is so ORDERED this 15th day of November, 2012.



Honorable Laura T. Swain
United States District Judge