UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCOTT TUBIAK and EDWARD CUELLO, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE NIELSEN COMPANY (US), LLC, and NIELSEN HOLDINGS N.V.,

Defendants.

No. 15-cv-5159 (PKC)

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR APPROVAL OF FAIR LABOR STANDARDS ACT SETTLEMENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Named Plaintiffs, Scott Tubiak and Edward Cuello ("Named Plaintiffs"), individually and on behalf of the Thirty-Two (2) Opt-In Plaintiffs who are all Class Members as defined below (collectively "Plaintiffs"), and Defendants The Nielsen Company (US), LLC and Nielsen Holdings N.V. (collectively "Defendants"), respectfully submit this memorandum of law in support of their joint motion for approval of the parties' Stipulation of Settlement and Release (the "Settlement," attached as Exhibit A to the Declaration of Orin Kurtz) pursuant to *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015).

The Settlement provides an immediate recovery to the Class Members and avoids the substantial risk to their claims including potential dismissal on summary judgment due to Second Circuit precedent that Defendants on the sole legal issue across the Class regarding whether Class Members' drive times from/to home and customer jobs was compensable for overtime purposes under the Fair Labor Standards Act (FLSA). Accordingly, the parties respectfully submit the Settlement is "fair and reasonable" and should be approved by the Court. *See, e.g., Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332, 335 (S.D.N.Y. 2012).

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 1, 2015, the Named Plaintiffs this collective action seeking overtime wages under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, (the "FLSA") for Defendants' alleged failure to pay for work in excess of Forty (40) hours during one or more work weeks between July 2012 and mid-February 2014 for which the Named Plaintiffs and other similarly situated employees with the title of Field Trainer (the "Class Members") did not receive proper overtime pay for all of their overtime hours as a result of Defendants' nationwide policy and/or practice of: (a) deducting the (i) first thirty (30) minutes and (ii) last thirty (30) minutes of Plaintiffs' daily drive times despite Plaintiffs carrying out duties for Defendants throughout these time periods.

The Complaint alleged that Plaintiffs were employed by Nielsen within the three-year statute of limitations period as Field Trainers throughout the United States and worked overtime hours (over 40 per week) for which they were not paid—even though Defendants did pay overtime compensation for all Field Trainers overtime hours outside of their drive times.[1]

The Complaint alleged that the Named Plaintiffs and the Class Members worked from home offices and did not report to any Nielsen office; the Class Members drove from their home offices to the first appointment of the day, and from their last appointment of the day back to their home offices. Plaintiffs alleged that they were required to perform substantial work at their home offices in the morning before commuting to their first appointment, and in the evening after returning from their last appointment. Plaintiffs alleged that Defendants, pursuant to a nationwide and uniformly-applied policy, deducted the first 30 minutes of drive time on travel from Class Members' home offices to their first appointment, and the first 30 minutes of drive time on travel from the last appointment of the day back to the Class Members' home offices.

On August 10, 2015, Plaintiffs filed a Motion for Conditional Certification of a Nationwide class of Field Trainers pursuant to the FLSA, 29 U.S.C. §216(b). Docket No. 22. On September 25, 2015, counsel for the Parties attended a status conference at which the Court ordered the parties to discuss settlement. Docket No. 37. The parties complied and engaged in extensive settlement negotiations, including an in-person meeting in October 2015, as required by the Court, but did

[1] As an example, Defendants' compensation records revealed that as of July 26, 2013, Plaintiff Tubiak had been paid $2,148.37 in overtime wages during the first seven months of 2013 and those records likewise reflected that Defendant paid Plaintiff Cuello $3,556.57 in overtime wages during the calendar year 2013.

not reach a settlement. Docket No. 38-40. On February 25, 2016, the Court granted Plaintiffs' Motion for Conditional Certification on the nationwide drive-time claim.[2] Docket No. 41.

In accordance with the Court's Order, Plaintiffs' Counsel mailed an opt-in notice to 61 putative class members. Declaration of Orin Kurt ("Kurtz Dec.") ¶2. Thereafter, 32 Opt-In Plaintiffs joined the action as Class Members. Docket Nos. 45-80. The Parties continued to engage in settlement discussions after conditional certification was granted. Kurtz Dec. ¶3. On September 7, 2016, the Court ordered the parties to Mediation after an extensive discussion during the Scheduling Conference about the Plaintiffs' substantive allegations, difficulty in the liability issues in light of the Second Circuit's decision in *Kuebel v. Black & Decker Inc.*, 643 F.3d 352 (2d Cir. 2011), and the parties' request for outside assistance to break a stalemate in their direct-settlement discussions. Docket No. 85. On October 25, 2016, the Parties attended a mediation before a court-appointed mediator, and a compromise was ultimately reached to resolve all of the claims in this case. Docket No. 88.

II. THE PROPOSED SETTLEMENT

The Settlement provides for a recovery of $105,561.00 for the underlying claims of the two (2) Named Plaintiffs and the Thirty-Two (32) Opt-In Plaintiffs, plus Service Awards for the Names Plaintiffs and Class Counsel's attorneys' fees and expenses. Kurtz Dec. Exh. A, ¶11. In addition, Defendants have also agreed to pay the cost of claims administration and the employer's share of payroll taxes separately and in addition to the Settlement Amount, such that those costs and taxes will not reduce the Class Members' recovery. Kurtz Dec. Exh. A, ¶25.

More specifically, each Class Members' Individual Settlement Payment is an individualized calculation that is based upon payment of 1.50 Overtime Hours per week at the

[2] Plaintiffs had also initially alleged a meal break claim which was not certified.

overtime rate of $37.00 per hour for each week in which the Class Member worked 39 hours or more per week between July 22, 2012 and February 5, 2014. Significantly, in approximately mid-February 2014, Nielsen modified its nationwide drive-time policy, and eliminated—and thus ceased—the daily drive time deduction practice the Company previously used to automatically deduct time from Field Trainers' total hours worked.

In addition, under the parties' Settlement, the Named Plaintiffs Tubiak and Cuello will receive payment from Defendants of $5,000.00 each as service awards for their efforts in bringing about this case, the risks they've endured and in representing the Class Members' interests. Kurtz Dec. Exh. A, ¶15.

Finally, Class Counsel for Plaintiff will receive payment from Nielsen of $145,939.00 for attorneys' fees and $3,500.00 for costs and expenses. Kurtz Dec. Exh. A, ¶8. Although the approved hourly rate for attorneys of similar experience in this District is at least $400.00 per hour (before consideration of a multiplier to account for the risks involved in specific litigation), the hourly rate for Plaintiffs' Counsel is below that level as a result of the substantial amount of time Plaintiffs' Counsel has expended on this action since first approaching Defendants with notice of the claims of the Named Plaintiffs and the Field Trainers Class in December, 2014, eight (8) months before the action was ultimately filed.

Plaintiffs and the Class Members are not providing a general release under the Settlement, with the release instead only extinguishing the specific claims at issue in this case during the time period between July 2012 and February 2014. Likewise, there is no confidentiality provision under the Settlement. Notably, general releases and confidentiality clause have each recently been held to offend the FLSA in the wake of the Second Circuit's 2015 decision in *Cheeks*. *See, e.g.*, *Gonzales v. Lovin Oven Catering of Suffolk, Inc.*, No. 14-CV-2824 SIL, 2015 WL 6550560, at *3

(E.D.N.Y. Oct. 28, 2015) (denying approval of FLSA settlement due to general release and confidentiality provision).[3]

III. THE PROPOSED SETTLEMENT SHOULD BE APPROVED

A. The Settlement Is Fair And Reasonable

When parties settle an employee's FLSA claims with prejudice, the settlement must be approved by a district court or the Department of Labor. *See Cheeks*, 796 F.3d at 206 (2d Cir. 2015).

"Courts approve FLSA settlements when they are reached as a result of contested litigation to resolve *bona fide* disputes." *Clark v. Ecolab Inc.*, No. 04CIV. 4488PAC, 2010 WL 1948198, at *7 (S.D.N.Y. May 11, 2010). "If the proposed settlement reflects a reasonable compromise over contested issues, the settlement should be approved." *Kochilas v. Nat'l Merchant Servs., Inc.*, No. 14-CV-00311, 2015 WL 5821631, at *7 (E.D.N.Y. Oct. 2, 2015). "Typically, courts regard the adversarial nature of a litigated FLSA case to be an adequate indicator of the fairness of the settlement." *Meigel v. Flowers of the World, NYC, Inc.*, No. 11 CIV. 465 KBF, 2012 WL 70324, at *1 (S.D.N.Y. Jan. 9, 2012). In addition,

> [i]n determining whether the proposed settlement is fair and reasonable, a court should consider the totality of circumstances, including but not limited to the following factors: (1) the plaintiff's range of possible recovery; (2) the extent to which the settlement will enable the parties to avoid anticipated burdens and expenses in establishing their respective claims and defenses; (3) the seriousness of the litigation risks faced by the parties; (4) whether the settlement agreement is the product of arm's-length bargaining between experienced counsel; and (5) the possibility of fraud or collusion.

Wolinsky, 900 F. Supp. 2d at 335 (S.D.N.Y. 2012) (citation and quotation marks omitted).

[3] Paragraph 27 of the Settlement provides for the dismissal without prejudice of the claims of Scott Blackwell, a Nielsen employee who filed an opt-in form but was determined not to be a Class member because he was not employed by Nielsen as a Field Trainer.

Here, the compromise under the parties' Settlement is fair and reasonable and was reached after extensive litigation, including the filing of Plaintiffs' successful motion for conditional certification, document discovery concerning the number of work weeks, actual hours worked by the Named Plaintiffs and each Opt-In Plaintiff, and potential damages of the Class Members, and extensive pre-litigation and post-filing settlement discussions. Each of the factors for approval of the settlement is met.

1. The Settlement Provides the Class Members With a Fair and Reasonable Recovery Considering the Totality of the Circumstances

The Class Members' range of recovery could have been as low as $0.00, if Defendants won on summary judgment, to a maximum of anywhere from $555.00 for some Opt-In Plaintiffs to as high as $14,800.00 in unpaid overtime for others had Plaintiffs survived both summary judgment and decertification and ultimately won at trial. In this regard, under the parties' Settlement, Class Members will receive between approximately $610.50 and $4,495.50 per person (with an average recovery of just over $3,100 per Class Member) based upon their specific number of work weeks in which they worked 39 hours or more per week, such that the Individual Settlement Payments account for the fluctuations in the amount of work each Opt-In Plaintiff performed during the class period.[4] Kurtz Dec. Exh. A, at Exh. A. "[T]he settlement figure is reasonable given the numerous uncertainties the plaintiffs confronted," including, as explained below under the third factor, the possibility that Defendants could have obtained summary judgment against Plaintiffs as a whole. *Vangelekos v. Wells Fargo Bank, N.A.*, No. 13 Civ. 6574-PKC (Docket No. 47 at 4-5) (Castel, J.) (finding settlement was fair and reasonable despite recovery in the lower range of potential values).

[4] In addition, one (1) Opt-In Plaintiff will receive $166.50 in overtime wages under the Settlement but that individual worked a total of only 4.50 weeks during the relevant class period, of which he only had 3.00 weeks of at least 39 or more hours worked.

As numerous courts have recognized, "[t]he determination whether a settlement is reasonable does not involve the use of a mathematical equation yielding a particularized sum." *See, e.g., Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (citation and quotation marks omitted). "Instead, 'there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Azogue v. 16 for 8 Hospitality LLC*, No. 13-CV-7899, 2016 WL 4411422, at *5 (S.D.N.Y. Aug. 19, 2016) (citation and quotation marks omitted).

2. The Settlement Allows the Parties to Avoid Substantial Burdens and Expenses

By settling at this time, both sides in the instant litigation avoid the substantial burden and expense of continued litigation that would have been necessary to establish their claims and defenses. If this action had gone through the rest of discovery and trial, it is possible that Defendants would have taken the deposition of each of Thirty-Four (34) Plaintiffs who are spread in numerous States throughout the country. Plaintiffs would have taken the deposition of multiple corporate representatives and management employees, which would have required substantial document production by Defendants, review of those documents by Plaintiffs, and extensive preparation of witnesses to be able to speak on behalf of Defendants as required by Rule 30(b)(6). A trial would have been unduly taxing on all parties and expensive, with proof concerning 34 Class Members required. Given the substantial expenses, expenditure of time, and the risks discussed below, the Settlement is a "reasonable compromise." *Kochilas*, 2015 WL 5821631, at *7.

3. The Settlement Allows the Class Members to Obtain an Immediate Recovery and Avoid Substantial Risk

By settling this action now, Plaintiffs avoid the substantial risk that this case would have been dismissed on summary judgment. Defendants repeatedly cited *Kuebel v. Black & Decker*

Inc., 643 F.3d 352, 354 (2d Cir. 2011) as binding Second Circuit authority for the proposition that the Class Members' first and last drive times were non-compensable commute time. There, as in this case, the plaintiff worked from a home office and alleged that he performed work before and after their first and last drive to appointments, thus causing his first and last drive time to be compensable. However, the Second Circuit held that the first and last drive times were non-compensable commute time and affirmed the district court's grant of summary judgment to the defendant/employer. *Kuebel*, 643 F.3d at 360 ("The fact that Kuebel performs some administrative tasks at home, on his own schedule, does not make his commute time compensable any more than it makes his sleep time or his dinner time compensable.").

In their opposition to Plaintiffs' motion for conditional certification, Defendants provided a preview of the arguments they would make on summary judgment, arguing that here, like in *Kuebel*, Plaintiffs' allegation that they were required to perform administrative tasks before and after their first and last drive time did not render the drive time compensable. Defendants noted that Plaintiffs "do not allege that they were required to do those tasks immediately preceding their drive, and, in fact, they had discretion as to when they would complete these activities." Docket No. 26 at 12. Defendants further noted that "Plaintiffs regularly took long breaks in between their drive and their completion of administrative tasks." Defendants noted one day in which Plaintiff Cuello had 2.4 hours of "unrecorded time" between the completion of his last drive time and his performance of administrative tasks. *Id.* at 12-13. Defendants argued similarly that on one exemplar day, Plaintiff "Tubiak finished driving home at 7:37 p.m. and then resumed administrative work at 9:56 p.m. according to his time entries." *Id.* According to Defendants, the "discretion that Field Trainers had in deciding when to complete the administrative work, the fact that such work was completed does not render their commutes compensable under the FLSA."

Indeed, as Defendants pointed out, *Kuebel* held that the "fact that Kuebel performs some administrative tasks at home, on his own schedule, does not make his commute time compensable any more than it makes his sleep time or his dinner time compensable." *Kuebel*, 643 F.3d at 360.

Although Plaintiffs believed they could distinguish *Keubel* because Field Trainers performed work while driving to and from their first appointments—a fact that was not discussed in *Kuebel*—Plaintiffs nonetheless recognize that *Kuebel* presented a significant chance that Defendants could obtain summary judgment. With the uncertainties presented by *Kuebel*, "the settlement figure is reasonable given the numerous uncertainties the plaintiffs confronted." *Vangelekos*, No. 13 Civ. 6574-PKC (Docket No. 47 at 4-5).

4. The Settlement is The Product of Nearly Two Years of Arms-Length Bargaining Including and Was Reached With the Help of a Court-Appointed Mediator

"In FLSA settlements . . . arm's-length negotiations involving counsel and a mediator raise a presumption that the settlement achieved is procedurally fair, reasonable, adequate, and not a product of collusion." *Diaz v. Scores Holding Co.*, No. 07 CIV. 8718 THK, 2011 WL 6399468, at *2 (S.D.N.Y. July 11, 2011).

Here, the Parties engaged in pre-litigation settlement discussions and post-filing settlement discussions including those ordered by the Court, while continuing to exchange information and litigate the matter and explore the strengths and weaknesses of their respective positions. Ultimately, the action settled with the assistance of a court-appointed mediator. Docket No. 88.

Moreover, there has been no fraud or collusion here. No party has been promised or is receiving anything more than what is set forth in the settlement agreement.

In this case, the parties have a bona fide dispute that goes to the core of the case: whether the Named Plaintiffs' and the Class Members' first and last drive times were compensable or not under the FLSA. As shown above, this Settlement is in the best interest of Plaintiffs, the Class

Members, and Defendants, by eliminating the risks of obtaining a decision adjudicating that dispute.

B. Plaintiffs Should Be Granted Service Awards For Taking Risks On Behalf Of The Class Members

Plaintiffs Scott Tubiak and Edward Cuello seek service awards in the amount of $5,000.00 each. This amount is reasonable and has been awarded in settlements with similar recoveries. *See, e.g., Salisbury v. Transcare Corporation*, No. 14-cv-2827(RER) (Docket No. 42) ($5,000 service awards to two plaintiffs, $250,000 gross settlement amount); *Romero v. La Revise Assocs., L.L.C.*, 58 F. Supp. 3d 411, 422 (S.D.N.Y. 2014) (same).

"In FLSA collective actions, just as in Rule 23 class actions, service awards are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiff." *Diaz*, 2011 WL 6399468, at *3 (S.D.N.Y. July 11, 2011) (compiling cases). Here, the Named Plaintiffs both provided substantial assistance in connection with the prosecution of this action and incurred risks by becoming named plaintiffs. The Named Plaintiffs both provided relevant documentation concerning their hours worked and/or the wages they were paid, assisted in drafting the complaint, provided information concerning Defendants' overtime policies, provided information and declarations for Plaintiffs' successful motion for conditional certification, reached out to other Field Trainers who provided information that was important to Plaintiffs' successful motion for conditional certification, and were prepared to sit for depositions and take this case to trial as necessary. Moreover, at the time this action was commenced, Plaintiff Edward Cuello was a current employee of Nielsen. Thus, service awards are particularly appropriate. *See Bozak v. FedEx Ground Package Sys., Inc.*, No. 3:11-CV-00738-RNC, 2014 WL 3778211, at *5 (D. Conn. July 31, 2014) ("Incentive awards are particularly appropriate in the

employment context ... [where] the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers") (citation and quotation marks omitted).

C. Plaintiffs' Counsel's Fees and Costs under the Settlement Should be Approved

Where, as here, a proposed settlement of FLSA claims includes the payment of attorneys' fees, the court must also assess the reasonableness of the fee award. 29 U.S.C. §216(b) (the Court shall "allow a reasonable attorneys' fee to be paid by the defendant, and costs of the action"); *Wolinsky*, 900 F.Supp.2d at 336; *Silva v. Miller*, 307 F. App'x 349, 351 (11th Cir.2009) ("FLSA requires judicial review of the reasonableness of counsel's legal fees to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement.").

"In an individual FLSA action [or, as here, where all plaintiffs are represented by counsel and there are no absent class members] where the parties settled on the fee through negotiation, there is a greater range of reasonableness for approving attorney's fees." *Mireku v. Red Vision Sys., Inc.*, No. 11 CIV. 9671 RA JLC, 2013 WL 6335978, at *1 (S.D.N.Y. Dec. 6, 2013) (citations and quotation marks omitted). The FLSA "does not require the court to assess the fairness of [the] agreed payment of attorneys' fees in settling an individual action." *Misiewicz v. D'Onofrio Gen. Contractors Corp.*, No. 08CV4377(KAM)(CLP), 2010 WL 2545439, at *5 (E.D.N.Y. May 17, 2010). Rather, the "Court scrutinizes whether the proposed fees present a conflict between plaintiffs and their counsel, and whether the basis for the fees has been sufficiently documented." *Vangelakos*, No. 13 Civ 6574, Docket No. 47 at 2.

"To determine the reasonableness of proposed attorney's fees, a court looks to evidence submitted by counsel that provides a factual basis for the award." *Wolinsky,* 900 F. Supp. 2d at 336 (citation omitted).

Plaintiffs' Counsel has submitted time and expense records to support the reasonableness of the fees and costs to be paid by Defendants under the Settlement. The time records, submitted as Exhibits B and C to the Kurtz Declaration, show that Plaintiffs' counsel spent a combined total of 438.60 hours working on this action over the two (2) year period between approximately October 2014 and the present. Plaintiffs' Counsel also estimates that another 15-20 hours will be spent in the future on this action in connection with the administration of the settlement, including answering questions from Class Members and ensuring that all Class Members receive their checks.

Plaintiff's Counsel performed substantial research concerning the law and facts before commencing this action, engaged in pre-suit settlement discussions with Defendants, drafted the complaint, drafted and succeeded on a motion for conditional certification, spoke to Class Members concerning their claims and the settlement of their claims, engaged in continued post-filing settlement discussions with Defendants, conducted exhaustive analyses of the voluminous time records provided by Defendants, drafted and submitted a mediation statement, attended the mediation at which a settlement was reached, and prepared the within motion for approval of the settlement. Kurtz Dec. ¶7. Each of these activities materially advanced the litigation and supports an award of attorneys' fees.

Along with expenses of $3,500.00, Defendants have agreed to pay the compromise sum of $145,939.00 to resolve all claims for fees by Class Counsel, which amounts to an effective rate of $332.73 per hour. Class Counsel worked on this matter for approximately two years without any

compensation. Class Counsel has not sought a multiplier of their lodestar as is granted in many class and collective action settlements. Class Counsel's hourly rate is within the range of rates awarded in this District for attorneys with over ten years' experience. *1199 SEIU United Healthcare Workers E. v. S. Bronx Mental Health Council, Inc.*, No. 13 CIV. 2768 JGK JCF, 2013 WL 6003731, at *7 (S.D.N.Y. Nov. 13, 2013) ("Courts in this district have approved hourly rates of $300–400 for partners in labor and employment cases."); *Wong v. Hunda Glass Corp.*, No. 09 CIV. 4402 (RLE), 2010 WL 3452417, at *3 (S.D.N.Y. Sept. 1, 2010) (six years ago, court held that "the range of fees in this District for civil rights and employment law litigators with approximately ten years' experience is between $250 per hour and $350 per hour").

Indeed, courts have approved higher hourly rates for Plaintiff's counsel. *See Salisbury v. TransCare Corporation*, No. 14-cv-2827 (RER) (E.D.N.Y.), Docket No. 42 (approving 33.3% of settlement amount, which amounted to an hourly rate of $398.32); *Puglisi v. TD Bank, N.A.*, No. 13 CIV. 637 GRB, 2015 WL 4608655, at *1 (E.D.N.Y. July 30, 2015) (awarding in full request for attorneys' fees of 33.3% of settlement where hourly rate for Keith M. Stern was $450 per hour hour) (Docket No. 94-1, ¶25).

Moreover, the fact that the attorneys' fees to be paid Class Counsel under the Parties' Settlement exceeds the Class Members' recovery is not dispositive of the reasonableness of the fees that have been reasonably incurred in prosecuting Plaintiffs' claims over the past two (2) years, during which time Defendants vigorously opposed those claims. "In FLSA cases, like other discrimination or civil rights cases, the attorneys' fees need not be proportional to the damages plaintiffs recover, because the award of attorneys' fees in such cases encourages the vindication of Congressionally identified policies and rights." *Allende v. Unitech Design, Inc.*, 783 F. Supp. 2d 509, 511 (S.D.N.Y. 2011).

Finally, Plaintiffs' Counsel submits that reimbursement of $3,500.00 for expenses is reasonable and should be approved by the Court. Kurtz Dec. Exhibit D. This requested reimbursement, which is less than the total of $3,915.35 incurred by counsel (*Id*.) includes the filing fee for the Complaint, service of the Summonses, *pro hac vice* admission for Keith M. Stern, electronic legal research on Westlaw and PACER, postage charges, and travel charges in connection with various in-person meetings and court conferences, each of which is routinely incurred and reimbursed in litigation. *See Diaz*, 2011 WL 6399468, at *6 ("Class Counsel's un-reimbursed expenses—including telephone charges, postage, transportation, working meal costs, photocopies, professional services, and electronic research-are reasonable and were incidental and necessary to the representation of the FLSA collective.").

IV. CONCLUSION

For all the foregoing reasons, the Parties respectfully request that the Court approve the parties' Stipulation of Settlement and Release, including the Settlement amount of $105,561.00, Service Awards of $5,000.00 each to Named Plaintiffs Scott Tubiak and Edward Cuello, and attorneys' fees and expenses to Class Counsel in the amount of $149,439.00.

Dated: New York, NY
December 1, 2016

Respectfully submitted,

CLASS COUNSEL:

LAW OFFICE OF KEITH M. STERN, P.A.

By: /s/Keith M. Stern*
KEITH M. STERN

CLASS COUNSEL:

GARDY & NOTIS, LLP

By: /s/Orin Kurtz
ORIN KURTZ

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for Defendants The Nielsen Company (US), LLC, and Nielsen Holdings N.V.

/s/ Lisa B. Lupion *

Jessica R. Perry
1000 Marsh Road
Menlo Park, CA 94025
650-614-7400
jperry@orrick.com

Lisa B. Lupion
51 West 52nd Street
New York, NY 10019
212-506-5000
llupion@orrick.com

* Electronic signature used with the permission of counsel.