

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DALLAS THORN,¹

Plaintiff,

v.

Case No. 2:12-cv-00768
Magistrate Judge King

BOB EVANS FARMS, INC.,

Defendant.

ORDER

This is a collective action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), and a class action under Rule 23 of the Federal Rules of Civil Procedure in which plaintiffs allege that defendant failed to pay its assistant managers overtime wages to which they were entitled under federal law and the laws of various states. *Second Amended Complaint*, ECF No. 217. On October 23, 2015, the Court preliminarily approved the parties' settlement, conditionally certified a settlement class, directed that notice be provided to the class members, and scheduled a fairness hearing. *Preliminary Approval Order*, ECF No. 210. *See also Order*, ECF No. 213. A fairness hearing proceeded as scheduled on February 18, 2016. No objections to the proposed settlement have been filed and no members of the class

¹The case caption reflects the name of the original plaintiff, Dallas Thorn. After the initiation of the action, Ms. Thorn was substituted as plaintiff by David Snodgrass. *See First Amended Complaint*, ECF No. 63. The *Second Amended Complaint* names four (4) individual plaintiffs, including Mr. Snodgrass. The parties and their filings refer to the action as "*David Snodgrass v. Bob Evans Farms, Inc.*"

appeared at the hearing. With the consent of the parties, see 28 U.S.C. § 636(c), this matter is now before the Court on the *Unopposed Motion for Final Approval of Collective and Class Action Settlement*, ECF No. 214 ("Motion for Final Approval"), and on the *Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, an Award of Service Payments to Representative Plaintiffs, and for Payment of Claims Administrator's Costs and Expenses*, ECF No. 215 ("Motion for Fees").

The settlement class was defined for settlement purposes as

the (i) Snodgrass Opt-Ins; (ii) all persons employed in the Assistant Manager position for Bob Evans in Ohio from May 15, 2012 to June 1, 2015; (iii) all persons employed in the Assistant Manager position for Bob Evans in Pennsylvania from May 14, 2011 to June 1, 2015; and (iv) all persons employed in the Assistant Manager position for Bob Evans from June 1, 2012 to June 1, 2015 not otherwise identified above, but excluding those people formerly employed in the Assistant Manager position for Bob Evans who already received notice of the Snodgrass action, and who did not opt in to the Snodgrass action.

Preliminary Approval Order, PAGEID# 5638-39; *Settlement Agreement*, ¶ 45, *Exhibit A to Motion for Settlement and Preliminary Approval and Notice of Settlement*, ECF No. 209.² Members of the collective action under Section 216(b) of the FLSA consist of the representative

²The *Second Amended Complaint* defines the class as:

all Assistant Managers who work or have worked for Defendant at any time in Arkansas, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, within the applicable statute of limitations under the respective state's wage-hour laws prior to the filing of this action and the date of final judgment in this action, who[m] Defendant classified as exempt from overtime.

Id. at PAGEID# 5845.

plaintiffs, the *Snodgrass* Opt-Ins, and members of the settlement class who submitted valid claim forms.

Pursuant to the *Settlement Agreement*, defendant has made available to the settlement class a total of \$16,500,000.00. *Settlement Agreement*, ¶ 16. Awards to the members of the settlement class are to be paid from this gross amount, less attorneys' fees and costs to class counsel, the enhancement payments to the representative plaintiffs, and the costs of claims administration. *Id.* at ¶ 19. The *Settlement Agreement* specified that class counsel would be paid no more than \$5,500,000.00 in attorneys' fees, and costs not to exceed \$87,500.00. *Id.* at ¶ 51(b). The claims administrator would be paid for the costs of administration and distribution of all payments, estimated to total \$50,000.00. *Id.* at ¶ 51(c).

Consistent with the *Settlement Agreement*, ¶ 63(c)(i)-(iv), notice was provided to members of the settlement class by the Claims Administrator. *Amended Declaration of Loree Kovach Regarding Notice and Settlement Administration*, ¶¶ 6-8, *Plaintiff's Exhibit 1*, ECF No. 218-1.³ More than 950 claim forms were received and *Snodgrass* Opt-Ins total more than 600 persons. *Id.* at ¶ 15. The combination of these figures total 1,566 eligible class members.

No class members requested exclusion from the class and, as noted *supra*, no objections to the settlement have been made. *Id.* at ¶¶ 10-

³The *Settlement Agreement* requires that, upon its execution, the *Second Amended Complaint* (which adds claims under the laws of additional states) be filed. Due to oversight, the *Second Amended Complaint* was not actually filed until the day of the fairness hearing. However, the notice provided to the settlement class members referred to all the claims asserted in the *Second Amended Complaint*. *Notice of Proposed Class Action Settlement to Snodgrass Opt-Ins*, PAGEID# 5744-45, attached as *Exhibit A* to *Declaration of Loree Kovach Regarding Notice and Settlement Administration*, ECF No. 216-1.

11.

This Court concludes that the settlement is fair, adequate, and reasonable. See Fed. R. Civ. P. 23(e)(2). The gross recovery per settlement class member is \$6,380.00. *Declaration of Seth Lesser in Support of Plaintiffs' Unopposed Motion for Final Approval of Collective and Class Action Settlement and Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, for an Award of Enhancement Payments to Representative Plaintiffs, and for Payment of the Claim Administrator's Costs and Expenses*, ¶ 31, ECF No. 216 ("*Lesser Declaration*"). There is no evidence that the settlement is the product of fraud or collusion. The *Settlement Agreement* reflects a vigorous effort by both sides to resolve the claims and defenses in this litigation, which has now spanned more than three (3) years. The file reflects extensive discovery and the parties participated in mediation sessions facilitated by well-experienced mediators. *Settlement Agreement*, ¶ 36. Considering the likelihood of ultimate success on the class claims, the extraordinary expense, complexity, and duration of this litigation, and the public interest in drawing to conclusion this protracted litigation on terms that provide a significant remedy to the settlement class, this Court concludes that the parties' settlement is fair, adequate, and reasonable.

The Court therefore **GRANTS** the *Motion for Final Approval*.

The parties also ask that the four (4) representative plaintiffs receive service payments in the amount of \$7,500.00 in recognition of their service to the settlement class, that the Claims Administrator be paid \$50,000.00, and that class counsel be awarded \$5,431,962.00 in

attorneys' fees (reflecting 32.92% of the common fund created by the *Settlement Agreement*) and \$156,537.02 in litigation expenses. *Motion for Fees*.

The Court agrees that the \$7,500.00 service payment to each of the representative plaintiffs is reasonable in light of the time, effort, and expense that each devoted to the litigation on behalf of the settlement class. The Court therefore approves those payments.

The Court also agrees that the Claims Administrator is entitled to payment of \$50,000.00. Indeed, the Claims Administrator's actual fees and costs exceed that amount. *Amended Declaration of Loree Kovach Regarding Notice and Settlement Administration*, ¶ 16.

Class counsel spent a total of 5,732.1 hours in prosecuting the litigation, for a lodestar amount of \$2,708,302.00. *Lesser Declaration*, ¶ 37 (and exhibits attached thereto).⁴ The fee requested represents a multiplier of 2.01 of the lodestar amount. *Id.* at ¶ 40. Considering the competence of class counsel in prosecuting this complex litigation, and the risks associated with the prosecution of the claims of the settlement class, the Court concludes that the requested fee is reasonable. *See Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974).

Class counsel also seeks reimbursement of expenses in the amount of \$156,537.02. This amount exceeds the \$87,500.00 specified in the *Settlement Agreement*. *Id.* at ¶ 51(b). Because class counsel agreed in the *Settlement Agreement* "not to petition the Court for any additional

⁴These figures do not include time spent in preparing the fee declarations and motion. *Lesser Declaration*, ¶ 39.

payments for fees, costs, or interest," *id.*, the Court will limit reimbursement of expenses to class counsel to \$87,500.00.

In short, the Court **GRANTS** the *Motion for Fees* except that reimbursement of expenses to class counsel is limited to \$87,500.00.

February 25, 2016

s/ Norah McCann King
Norah McCann King
United States Magistrate Judge