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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

THOMAS BELTON, MAURICE GREEN, and MONYAL McLARTY, individually and on behalf all others similarly situated, **Plaintiffs,** **v.** **ALAMO CLAIM SERVICE, PETER PERRINE, THORLIN LEE, DAVID SERFASS, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,** **Defendants.**	**1:12-cv-01306-JES-BGC**

ORDER GRANTING PARTIES' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT AND CLASS CERTIFICATION

The above-entitled matters came before the Court on the Parties' Motion for Preliminary Approval of Proposed Settlement and Class Certification ("Motion for Preliminary Approval") (Docket No. 108).

I. Procedural History

A. The Complaint.

1. On August 21, 2012, Plaintiff Thomas Belton filed this Action in the United States District Court for the Central District of Illinois, Peoria Division, on behalf of himself and others similarly situated, alleging that Defendants violated the Illinois Minimum Wage Law, 820 ILCS 105/1 – 15 ("IMWL"), and Fair Labor Standards Act, 29 U.S.C. §201 *et seq*. ("FLSA"), by classifying claims adjusters working in State Farm's Bloomington, Illinois office as independent contractors and not paying them overtime wages (the "Lawsuit"). Doc. 1.

2. On January 14, 2013, Belton filed a First Amended Complaint to add two additional Named Plaintiffs, Monyal McLarty and Maurice Green, and expand the class definition to include all adjusters who worked for Alamo and State Farm in Illinois. Doc. 47.

Plaintiffs filed a Second Amended Complaint on January 17, 2013 to correct an inadvertent omission in their First Amended Complaint. Doc. 49.

3. Defendant State Farm filed an Answer to the Complaint on September 27, 2012, and the Alamo Defendants filed an Answer to the Complaint on October 26, 2012. Doc. 18 and Doc. 24. The Alamo Defendants filed their Answer to the Second Amended Complaint on January 31, 2013, Doc. 54, and State Farm filed its Answer to Plaintiffs' Second Amended Complaint on February 5, 2013. Doc. 60. Defendants deny that the independent contractor classification and non-payment of overtime wages was unlawful.

B. The Federal Collective Action and Rule 23 Class Action.

4. Plaintiffs initially filed their motion for conditional certification of a FLSA collective action and a preliminary motion for Rule 23 class certification on September 28, 2012. Docs. 20 and 21. As a result of Plaintiffs' filing an amended complaint and pursuant to Judge Cudmore's text order, Plaintiffs were directed to file amended motions for conditional and class certification and Plaintiffs original motions for conditional certification and class certification were stricken as moot. ECF text order dated January 17, 2013.

5. Named Plaintiffs filed their amended motion for conditional certification of a FLSA collective action and notice to the class under 29 U.S.C. §216(b) on February 5, 2013. Doc. 57. Plaintiffs also filed an amended preliminary motion for Rule 23 class certification on that same day. Doc. 56. In both motions, Named Plaintiffs sought to certify a class for:

> All persons who were hired by Alamo Claim Service to work in State Farm Offices in Illinois as claim representatives who were classified as independent contractors and paid a day rate for their work between August 21, 2009 and the date of final judgment in this matter.

6. The Alamo Defendants and State Farm filed their opposition to Plaintiffs Motion for Conditional Certification on March 8, 2013. Doc. 73 and Doc. 74. Defendants did not oppose Plaintiffs' preliminary Class Certification Motion and the Court granted Plaintiffs' request to

proceed with Class discovery. ECF Text Order dated December 17, 2012. At the time of settlement the Court had not ruled on Plaintiffs' Motion for Conditional Certification.

7. On June 18, 2013, after a full day of mediation before U.S. Magistrate Judge Byron C. Cudmore, the Parties reached a settlement. Pursuant to Judge Cudmore's minute entry on June 19, 2013, all deadlines and settings have been cancelled and all pending motions are denied as moot pending the approval of the Parties' settlement agreement. ECF Minute Entry dated June 19, 2013.

II. Preliminary Approval of Settlement

8. Based upon the Court's review of the Plaintiffs' Memorandum of Law in Support of the Motion for Preliminary Approval, the Declaration of Michael J.D. Sweeney in Support of Parties' Motion for Preliminary Approval of Proposed Settlement and Class Certification ("Sweeney Decl."), and all other papers submitted in connection with the Motion for Preliminary Approval, the Court grants preliminary approval of the settlement memorialized in the Master Settlement Agreement ("Settlement Agreement"), attached to the Sweeney Decl. as Exhibit A.[1]

9. The Settlement benefits 202 Settlement Class Members listed in Exhibit 1 of the Settlement Agreement. The Settlement Agreement creates a fund, the sum of which is described in the Settlement Agreement, to settle this action. See, Ex. A, Settlement Agreement, ¶ 2, pg. 3.

10. The parties have agreed that Plaintiffs may petition the Court for an award from the Settlement Fund for attorneys' fees and costs (including the costs of the Settlement Administrator) as well as for Service Awards for the named parties and discovery plaintiffs. After these amounts have been deducted from the Settlement Fund, the remaining funds will be allocated among the Plaintiffs using the following formula:

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[1] Unless otherwise indicated, all Exhibits referred to in this Order are Exhibits to the Sweeney Decl.

(1) The number of hours greater than 40 that a Plaintiff worked each week for Defendants in Illinois during the Claim Period will be derived from wage-and-hour data provided by the Alamo Defendants ("Overtime Hours").

(2) Each Plaintiff's "Hourly Overtime Rate" will be determined by dividing the day rate the Plaintiff was contracted to receive by the scheduled daily hours (10) and dividing the resulting quotient by two. The Hourly Overtime Rate is calculated for each week that a Plaintiff worked during the Claim Period to account for any variations in the day rate.

(3) The Overtime Hours for each Plaintiff will be multiplied by the Hourly Overtime Rate to determine the Plaintiff's claim for back wages ("Total Back Wages").

(4) A "Liquidated Damages Multiplier" will be applied to each Plaintiff's Total Back Wages to determine his or her "Liquidated Damages". The Liquidated Damages Multiplier used for Plaintiffs who submitted a signed consent to sue form to Class Counsel prior to the June 19, 2013 settlement conference will be 100%. The Liquidated Damages Multiplier used for Plaintiffs who did not submit a signed consent to sue form to Class Counsel prior to the June 19, 2013 settlement conference will be 48%.

(5) Each Plaintiff's "Preliminary Individual Damage Amount" will be the sum of his or her Total Back Wages and Liquidated Damages.

(6) All Preliminary Individual Damage Amounts will then be prorated so that the total of all Preliminary Individual Damage Amounts will be equal to the Settlement Amount, net of attorneys' fees and costs and service payments to the Named Plaintiffs. The prorated Preliminary Individual Damage Amount will be the "Final Damage Amount" with the proviso that any Plaintiff whose Final Damage Amount is less than $500 will receive a minimum Final Minimum Damage Amount of $500.

(Ex. 2 of the Settlement Agreement at ¶ A (1)-(6)).

11. The approval of a proposed class action settlement is a matter of discretion for the trial court. *Vought v. Bank of America, N.A.*, 901 F.Supp.2d 1071, 1083 (C.D. Ill. 2012). During the preliminary approval stage, the district court decides whether the proposed settlement falls "within the range of possible approval." *Cook v. McCarron*, No. 92 C 7042, 1997 WL 47448, *7-8 (N.D. Ill. Jan. 30, 1997) (citation omitted). If so, the court should grant preliminary approval of the settlement, authorize the parties to give notice of the proposed Settlement to

Class Members, and schedule a formal fairness hearing. *Id.*; *Gautreaux v. Pierce,* 690 F.2d 616, 621, n.3 (7th Cir. 1982). At the formal fairness hearing, Class Members may be heard and further evidence and argument concerning the fairness, adequacy, and reasonableness of the Settlement may be presented. Neither formal notice nor a hearing is required at the preliminary approval stage; the Court may grant such relief upon an informal application by the settling Parties, and may conduct any necessary hearing in court or in chambers, at the Court's discretion. *Cook*, 1997 WL 47448, *7.

12. Preliminary approval, which is what Plaintiffs seek here, is the first step in finalizing the settlement process. It simply allows notice to issue to the class and for class members to object to or opt-out of the settlement. After the notice period, the Court will be able to evaluate the settlement with the benefit of the class members' input.

13. Preliminary approval of a settlement agreement requires only an "initial evaluation" of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties. Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 11.25 (4th ed. 2002). A proposed class settlement will be preliminarily approved if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1)(C); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.,* 463 F.3d 646, 652 (7th Cir. 2006); *Vought v. Bank of America, N.A.*, 901 F.Supp.2d 1071, 1083 (C.D. Ill. 2012). A strong presumption of fairness exists when the settlement is the result of extensive arm's-length negotiations. *In re Kentucky Grilled Chicken Coupon Marketing & Sales Practices Litigation*, 280 F.R.D. 364, 378 (N.D. Ill. Nov. 16, 2011); *Hispanics United of DuPage County v. Village of Addison, Ill.,* 988 F. Supp. 1130, 1150, n.6 (N.D. Ill. 1997).

14. The Court concludes that the parties' settlement meets all these criteria and clearly falls "within the range of possible approval." *Cook*, 1997 WL 47448 at *7. Therefore,

notice to the Class is appropriate.

15. The Court also 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.

16. The Honorable Magistrate Judge Byron Cudmore, who is an experienced mediator, assisted the parties with the settlement negotiations and presided over a full day mediation. This reinforces the non-collusive nature of the settlement.

III. Certification of the Class Is Appropriate

17. Class certification is appropriate, in part, because the Parties have reached an agreement regarding class certification in the context of this settlement. The Parties requested that the Court enter an order certifying the settlement class for settlement purposes so that notice of the proposed settlement can be issued to the settlement class and so that class members will be informed of the existence and terms of the proposed settlement, of their right to be heard on its fairness, of their right to opt out, and of the date, time and place of the formal fairness hearing. *See* Manual for Complex Lit. at §§ 21.632, 21.633.

18. A determination of class certification requires a two-step analysis. Fed. R. Civ. P. 23(b); *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). First, the plaintiff must demonstrate that the action satisfies the four threshold requirements of Rule 23(a): (1) numerosity (the class must be so large that individual joinder is "impracticable"); (2) commonality (questions of law or fact common to the class); (3) typicality (named plaintiff claims are typical of the class's claims); and (4) adequacy of representation (the class representative must be able to fairly and adequately protect class interests). Fed. R. Civ. P. 23(a)(1) – (4).

19. Second, the action must qualify under one of the three subsections of Rule 23(b).

Fed. R. Civ. P. 23(b); *Rosario*, 963 F.2d at 1017; *Arango v. GC Services, LP, et al.*, No. 97 C 7912, 1998 WL 325257, at *1 (N.D. Ill. June 11, 1998). In this case, class certification is appropriate under Rule 23(b)(3) where "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

A. The Numerosity Requirement Is Met.

20. Rule 23(a)(1) requires a class large enough that the joinder of all members would be "impracticable." Impracticability does not mean "impossibility," but only difficulty or inconvenience in joining all members of the class. *Doe v. Guardian Life Ins. Co. of Am.*, 145 F.R.D. 466, 471 (N.D. Ill. 1992). Most courts have found that a Class consisting of more than 40 usually satisfies the numerosity requirement. *See Chandler v. Southwest Jeep-Eagle, Inc.*, 162 F.R.D. 302, 307 (N.D. Ill. 1995).

21. In this case, that threshold requirement is easily met. There are two-hundred and two (202) Class Members who all worked as insurance claims adjusters for Alamo and State Farm in Illinois and were all classified as independent contractors during the Class Period and were not paid one and one half times their regular rate for overtime hours worked. Sweeney Decl., Exhibit A (Settlement Agreement), Exhibit 1 (Class List). A class of this size easily satisfies the numerosity requirement. *Yon v. Positive Connections, Inc.*, No. 04 C 2680, 2005 WL 628016, at *2 (N.D. Ill. Feb. 2, 2005).

B. Commonality Requirement Is Met.

22. A plaintiff satisfies the commonality requirement if he can show that "the class members' claims hinge on the same conduct of the defendants." *Kernats v. Comcast*, 2010 WL 4193219, at *11-12 (N.D. Ill. Oct. 20, 2010). There is a low threshold for satisfying the

commonality prerequisite and where a defendant directs standardized conduct toward the class, commonality is typically found. *Kernats*, 2010 WL 4193219 at *6 (certifying IMWL and IWPCA claims for off the clock work and stating that "standardized conduct on the part of [defendant] are enough to meet the relatively low hurdle of proving commonality").

23. The Alamo Defendants acknowledge that they classified Plaintiffs and Class Members as independent contractors and did not pay them overtime wages. Here Plaintiffs' IMWL claim meets the requirements of commonality because it alleges that all Class Members were classified as independent contractors by the Alamo Defendants, worked more than 40 hours a week, were subject to the same fixed day rate pay policies, and were not paid overtime for hours worked more than 40 in a week.

C. Typicality Requirement Is Met.

Claims of the class representative and class members are typical if they arise from the same practice or course of conduct and are based on the same legal theory. *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998); *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983); *Miller v. Spring Valley Properties*, 202 F.R.D. 244, 248 -49 (C.D. Ill. 2001). Typicality and commonality are closely akin. *Rosario*, 963 F.2d at 1018. "Typical does not mean identical, and the typicality requirement is liberally construed." *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill. 1996); *Gesell v. Commonwealth Edison Co.*, 216 F.R.D. 616, 624 (C.D. Ill. 2003).

D. The claims of the Named Plaintiffs and Class Members arise from the same actions of the Defendants. Class Members were all misclassified as independent contractors and paid a day-rate and no overtime wages. Thus, the claim arises from the same actions of the Defendants. *Retired Police Ass'n v. City of Chicago*, 7 F.3d 584, 596 (7th Cir. 1993) (typicality is meant to insure that the claims of the class representative have the "same essential characteristics as the claims of the class at large.").**Plaintiffs Are**

Adequate Representatives

24. To meet the adequacy of representation requirement, the class representatives must "be a part of the class, that is, he must possess the same interest and suffer the same injury shared by all members of the class he represents." *Mulvania v. Sheriff of Rock Island County*, 2012 WL 3486133 at *4 (C.D. Ill. Aug. 15, 2012) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–626 (1997)). The conflict of interest inquiry merely requires that plaintiffs not have antagonistic interests, so "only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." See *Subedi v. Merchant*, 2010 WL 1978693, at *5, (N.D.Ill. 2010) (quoting Rosario, 963 F.2d at 1018). The Class Representatives worked in the same job position and were paid in the same manner as all other Class Members. They suffered the same injuries as Class Members and have the same interest in redressing those injuries. The Class Representatives also have no antagonistic interests that go to the subject matter of the lawsuit.

E. Plaintiffs' Counsel Is Experienced and Qualified.

25. Plaintiffs' Counsel will fairly and adequately protect the interests of the class. Plaintiffs' Counsel are experienced class action attorneys and have acted as representative counsel in numerous actions in federal and state courts. *See, Brumley*, 2012 WL 1019337, *10; *Morangelli*, 275 F.R.D. at 119; *Bredbenner*, 2011 WL 1344745, *7; *Clark*, 2009 WL 6615729, *5. Thus, Plaintiffs' Counsel is experienced and qualified and meet the requirement under Rule 23(a)(4) and is designated Class Counsel.

F. Rule 23(b)(3) Is Met.

26. Certification is appropriate under Rule 23(b)(3) where "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for the fair and efficient

adjudication of the controversy." An action demonstrates a "predominance" of common questions where "the group for which certification is sought seeks to remedy a common legal grievance." *Riordan v. Smith Barney*, 113 F.R.D. 60, 65 (N.D. Ill 1986).

27. For the reasons set forth above with respect to commonality under Rule 23(a)(2) and typicality under Rule 23(a)(3), there exist predominating common questions of fact and law, and the class members' claims arose from the same actions of as those of the Named Plaintiffs.

28. A class action is a superior method of adjudication of the claims in this case. The class mechanism serves judicial economy and efficiency, as well as consistency of judgments,. *See Scholes v. Stone, McGuire & Benjamin*, 143 F.R.D. 181 (N.D. Ill 1992). The alternative is potentially dozens or hundreds of individual lawsuits and piecemeal litigation. Likewise, a class action allows the Parties to resolve the claims of 202 persons in one coordinated proceeding, thus conferring significant benefits upon each class member and benefitting Defendants by being sparing them the expense and potential inconsistency of scores of individual lawsuits.

29. As set forth above, the claims raised in this case meet each of the statutory requirements for class treatment and therefore a Class composed of: "All persons who were hired by Alamo Claim Service to work in State Farm Offices in Illinois as claim representatives who were classified as independent contractors and paid a day rate for their work between August 21, 2009 and the date of final judgment in this matter."

IV. Notices

30. The Court approves Plaintiffs' Proposed Settlement Notice ("Proposed Notice"), attached as Exhibit 1 to the Motion for Preliminary Approval.

31. The content of the Proposed Notice fully complies with the requirements under Federal Rule of Civil Procedure 23.

32. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), a notice must provide:

> 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).

33. The Proposed Notice here satisfies each of these requirements. The Notice describes the terms of the settlement, informs the class about the allocation of attorneys' fees, provides specific information regarding the date, time, and place of the final approval hearing, and informs each Class Member of the minimum amount he will receive under the settlement. It also informs class members of their right to opt-out of or object to the settlement.

34. Accordingly, the detailed information in the Proposed Notice is more than adequate to put class members on notice of the proposed settlement and is well within the requirements of Rule 23(c)(2)(B). The Court approves the Proposed Notice.

V. Class Action Settlement Procedure

35. The Court hereby adopts the following settlement approval process, which safeguards class members' procedural due process rights, enables the Court to fulfill its role as the guardian of class interests, and is consistent with the standard procedure for evaluating class action settlements, *see* Fed. R. Civ. P. 23(e); *Newberg* §§ 11.22 *et seq.*:

a. Alamo provides the Settlement Administrator with a list, in electronic form, of each Class Members' name; Alamo's unique four-character code, Social Security Number; last known mailing addresses, last known telephone number, and last known email addresses, to the extent such information exists on file with Alamo; and each Plaintiffs' Final Minimum Damage Amount (as provided by Plaintiffs' Counsel) within five (5) days of this Court's Preliminary Approval Order of the Settlement.

b. The Settlement Administrator shall mail the court-approved notices to Plaintiffs via First Class United States Mail, postage prepaid within five (5) days of receiving the Class List from Class Counsel.

c. Class Members shall have thirty (30) days after the date the Notices are mailed to opt out of the settlement and/or object to the settlement.

d. A final fairness hearing will be held as soon as is convenient for the Court after the notice period has run but no earlier than sixty (60) days from the date of the Court's Preliminary Approval Order of the Settlement.

e. Not later than fifteen (15) days before the Fairness Hearing, Plaintiffs will submit a Motion for Judgment and Final Approval.

f. If the Court grants Plaintiffs' Motion for Final Approval of the Settlement, the Court will issue a Final Order and Judgment for Dismissal.

g. The Settlement Administrator will mail settlement checks to the Plaintiffs, and checks for the attorneys' fees and costs to Class Counsel within five (5) days after the deposit of the Settlement Amount described in Section 2 of the Settlement Agreement.

h. The Court will retain jurisdiction over the case following the entry of the Judgment for Dismissal until 30 days after the end of the Acceptance Period as defined in paragraph XI of Exhibit 3 of the Settlement Agreement.

It is so ORDERED this 7 day of Oct, 2013.

s/Chief Judge James E. Shadid

Honorable James E. Shadid
United States District Judge