

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

John O'Bannon, et al.,

Plaintiffs,

v.

Friedman's, Inc.

Defendant.

Case No. AW-03-623

**NOTICE OF MOTION AND MOTION  
FOR ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

TO ALL PARTIES AND ATTORNEYS OF RECORD:

Please take notice that on February 11, 2009 at 1:30 p.m., by telephonic appearance pre-arranged with the Court, Plaintiffs will move the Court for final approval of the Consent Decree previously submitted to the Court herein and granted preliminary approval on October 29, 2008 (Doc. 164).

This Motion is based upon this Notice of Motion, Motion and Memorandum of Points and Authorities; the Declaration of Loree Kovach ("Kovach Decl.") submitted with the Motion, the pleadings and papers submitted with Plaintiffs' Motion for Preliminary Approval filed September 25, 2008 (Doc. 160), and the entire record in the matter, and on such arguments or evidence as the Court may receive at the noticed hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**A. The Court's Preliminary Approval Order Has Been Carried Out With Results That Confirm That the Settlement Is Fair, Adequate, and Reasonable.**

In their Motion for Preliminary Approval ("Prelim. App. Motion"), Plaintiffs set out (1) the class definition incorporated in the settlement (Prelim. App. Motion at 2), the definition of those class members eligible to claim a share of the monetary relief made available through the settlement (*Id.* at 2-3); the history of this litigation, as relevant to approval of the settlement (*Id.* at 3-8); and the relief

provided by the settlement (*Id.* at 3 and n. 4). It is not necessary to repeat these showings here, and Plaintiffs incorporate them by reference.

The Court granted preliminary approval to the settlement on October 29, 2008, after a telephonic hearing. Its Order Granting Preliminary Approval of Consent Decree [etc.] (“Prelim. App. Order”) (Doc. 164) reviewed the history of the case and the difficult circumstances in which the settlement occurred, including the two bankruptcy proceedings and ultimate liquidation of Friedman’s (Prelim. App. Order. at 1-4) and the terms of the proposed settlement (*Id.* at 4). The Court preliminarily found the settlement terms and the proposed Consent Decree to be “fair, adequate, and reasonable,” and specifically found that the monetary relief, enhancement awards for the named plaintiffs, class representatives, and other charging parties represented by class counsel, and the attorneys’ fees and costs to be paid to class counsel were likewise “fair,” “warranted,” and/or “fair and reasonable” (*Id.* at 6). The Court preliminarily certified and defined the class and found that its certification of the class and appointment of class counsel met the applicable standards of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) and (g) (*Id.* at 5). The Court further approved and ordered into effect certain proposed procedures for giving class members notice of the proposed settlement and an opportunity to opt out or object to the settlement (*Id.* at 6-7), and set the present Final Fairness Hearing at which objectors would have an opportunity to appear (*Id.* at 7-8).

The two classes each received notice following the procedures approved and ordered by the Court; that notice program was administered by Settlement Services, Inc. (“SSI”), a Settlement Administrator appointed by the Court. *See generally* Kovach Decl. at ¶¶ 1-5. Notice was effectively given to 6,539 employee class members by first class mail; for those returned with forwarding addresses or as undeliverable, SSI obtained updated addresses through a mail address trace and re-mailed notices to the updated addresses (*Id.* at ¶¶ 2, 4-5). Since no addresses or other records were available for members of the applicant class, notice to that class was published in a widely read national newspaper, USA Today (*Id.* at 3). Of the employee class members to whom notice was sent, 2,832 met the qualifications to participate in the monetary recovery under the settlement. The eligible employee class

members' notice packages contained claim forms, and the published notice to applicant class members contained instructions for class members to obtain claim forms from SSI. All claim forms had to be postmarked by January 16, 2009 (*Id.* at ¶6). Both notices advised class members of their right to opt out or object to the settlement in writing postmarked by January 6, 2009 (*Id.* at ¶¶7-8).

The results of the notice and claims procedure indicate nearly universal acceptance of the settlement by class members. *No class member objected to the settlement, and no class member opted out of it* (Kovach Decl. at ¶¶ 7-8). A total of 632 employee class members submitted claim forms to participate in the monetary relief provided by the settlement, and a total of 22 persons submitted rejected applicant claim forms. (*Id.* at ¶6).

**B. The Settlement Terms Are Fair, Adequate and Reasonable and Should Be Given Final Approval.**

Plaintiffs' Preliminary Approval Motion laid out the applicable standards and authorities, particularly in the Fourth Circuit and the District of Maryland, that guide a District Court's determination whether to approve a class action settlement under Rule 23(e). See Prelim. App. Motion at 8-10. We will not repeat that discussion here and incorporate it by reference. Under those standards and authorities, and in light of the results of carrying out the Court's Preliminary Approval Order, it is clear that the parties' settlement – including its provisions for enhancement awards, attorneys' fees and costs, as well as the equitable and monetary relief for the class - warrants final approval.

First, the class members by not objecting and not opting out, but rather in large numbers seeking to participate in the settlement's relief, have strongly indicated that they regard the settlement as sufficient to protect their interests. In class counsel's experience, it is unusual in a settlement class of this size that not a single class member has objected or opted out. Moreover, in class counsel's experience - given that the class consists mostly of relatively modest or low wage workers spread thinly over a large geographical area who worked for or may have applied to Friedman's a number of years in the past - the submission of claim forms by approximately one-fourth of the eligible employee class members, and more than a small handful of applicants, is surprising in a positive sense. In the opinion

of class counsel, these facts are strongly indicative of the acceptance of the settlement terms as fair, adequate and reasonable by class members.

Second, the monetary relief to be paid to over 650 class members who have submitted timely and proper claims is not *de minimis*, and should even be considered as substantial given the grim financial realities of a bankrupt and liquidating defendant that constrained the settlement. SSI calculates that eligible and claiming employee class members will receive on average approximately \$525-\$535 each (Kovach Decl. ¶9). Eligible applicant claimants' awards are anticipated to amount to \$300 each (*Id.*). A total of \$203,500 in enhanced awards will be paid to four named plaintiffs, four other charging parties, and 18 other class members who provided declarations and assisted in the prosecution of the litigation to the benefit of the class. The entire amount of money available for payment to plaintiffs and class members under the settlement will be distributed to them; there will be no reversion to Friedman's or its insurer. These are more than reasonable recoveries in the difficult circumstances. No class member has objected or commented that these recoveries are inadequate.

Third, the attorneys' fees and costs awarded by the settlement – already preliminarily approved by the Court – have drawn no criticism from any class member. Since the costs awarded will merely repay class counsel for costs advanced on an at-risk basis over many years, and the attorneys' fees will amount to approximately 10% of class counsel's lodestar amounts, it is clear that neither component is a windfall to counsel or unfairly deprives class members of amounts that should be allocated to them.

Fourth, the universal acceptance of the settlement by the class members confirms that no person contends s/he was improperly excluded from the class or the portion thereof eligible to participate in the monetary recovery, and that class counsel have done a good job in attaining what relief they could in this case, and that both they and the three class representatives – O'Bannon, Hampton and Moore – have adequately and effectively represented the class members' interests. Therefore, the Court should confirm and give final approval to the class definition, class certification, and appointment of class representatives and class counsel.

Finally, the Administrator, SSI, has confirmed that it is on track to complete the notice, claims administration, and QSF administration duties assigned to it by the Consent Decree in a timely and successful manner, and at a cost (approximately \$80,000 including out of pocket advertising and mailing expenses, *see* Kovach Decl. at 10) within the budget anticipated for those services by class counsel when SSI was named as the administrator in the Consent Decree.

**C. Additional Questions and Issues, If Any, Will Be Addressed at the Final Approval Hearing.**

The Court has indicated that, in light of the successful completion of all notice and claims procedures, plaintiffs may submit an abbreviated brief in support of final approval. We have done so, including all of the relevant facts and information the Court needs to consider final approval, in class counsel's judgment, but omitting extensive citation to legal authorities (already cited in the Motion for Preliminary Approval) or discussion of the application of those authorities to the facts presented at the time of preliminary approval or in the present motion. Should the Court deem discussion of such authorities or the application of governing legal standards to the facts presented to be necessary, class counsel will be prepared to address those matters at the telephonic final approval hearing.

///

///

///

///

///

///

///

///

**D. Conclusion**

For the reasons set forth in Plaintiffs' Motion for Preliminary Approval and in this Motion for Final Approval, the Court should grant final approval to the proposed Consent Decree. A proposed Order is submitted herewith.

Dated: January 30, 2009

Respectfully Submitted,

/s/ Morris J. Baller

BARRY GOLDSTEIN (admitted pro hac vice)

bgoldstein@gdblegal.com

MORRIS J. BALLER (admitted pro hac vice)

mballer@gdblegal.com

LAURA L. HO (admitted pro hac vice)

lho@gdblegal.com

GOLDSTEIN, DEMCHAK, BALLER, BORGAN &  
DARDARIAN

300 Lakeside Drive, Suite 1000

Oakland, CA 94612-3534

(510) 763-9800

DANIEL B. EDELMAN (U.S. Dist. Ct. Bar No. 2906)

edelman@kmblegal.com

YABLONSKI, BOTH & EDELMAN

1140 Connecticut Avenue, NW, Suite 800

Washington, D.C. 20036

(202) 833-9060

(202) 463-6688 (facsimile)

(Local Counsel)

THOMAS A. WARREN (admitted pro hac vice)

tw@nettally.com

LAW OFFICES OF THOMAS A WARREN

P.O. Box 1657

Tallahassee, FL 32302

(850) 385-1551

(850) 385-6008 (facsimile)

KEENAN NIX (admitted pro hac vice)

krsn@nixgraddock.com

NIX & GRADDOCK

124 Church Street

Decatur, GA 30030-3325

(404) 377-7600

(404) 377-8700 (facsimile)

ATTORNEYS FOR PLAINTIFFS AND THE PUTATIVE  
CLASS