

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

IN RE WAYNE FARMS LLC
FLSA LITIGATION

Civil Action No. 2:07md1872 KS-MTP
(ALL CASES)

ORDER GRANTING PRELIMINARY APPROVAL TO TERMS OF SETTLEMENT

This cause is before the Court on Joint Motion for Settlement Approval [134] filed by all parties hereto. In this Motion the parties request this Court to approve a compromise settlement of all issues except the quantum of attorneys' fees to be awarded to Plaintiffs' counsel. Following the filing of the Motion, this Court entered its Order setting hearing on Joint Motion for Approval of Settlement [136]. Pursuant to said Order, notice was sent to all interested parties and the hearing was held on July 29, 2009. No individual Plaintiffs appeared and both sides participated through their respective counsel.

Following the hearing, the Court took the Joint Motion for Settlement Approval under advisement and now having considered the oral arguments, briefs, applicable case law, etc., and on the request for preliminary approval, does hereby find as follows, to-wit:

I. Overview of This Litigation

This case is a Fair Labor Standards Act ("FLSA") overtime case involving production workers at Defendant's chicken processing plants in Laurel, Mississippi; Union Springs, Alabama; Decatur, Alabama; Enterprise Alabama; Albertville, Alabama; College Park, Georgia; and Pendergrass, Georgia. At one time there were 2,416 Plaintiffs, but through the various

motion-driven dismissals, the number has been reduced to 1,336 Plaintiffs. This litigation has continued over two years and has involved numerous motions, voluminous discovery, and contentious litigation. The claims of Plaintiffs are that they were not paid for certain time that they spent walking to the production line and donning and doffing certain protective clothing. Numerous arguments have been made by Defendant, including the Section 203(o) exclusion, the defense that the time spent is *de minimis*, and the assertion that Plaintiffs have been paid for the time that they claim. Numerous factual disputes remain.

Following the extensive litigation, the parties mediated over a period of weeks the claims and as a result of the mediation the Settlement Agreement that is attached as Exhibit “A” to the Motion for Settlement Approval [134] herein has evolved.

II. Standard of Review

This Court is required to determine whether or not the settlement is “a fair and reasonable resolution of a bona fide dispute over FLSA provisions.” *Collins v. Sanderson Farms*, 568 F. Supp. 2d 714, 719 (E.D.La. 2008) (quoting *Lynn’s Food Stores*, 679 F.2d at 1354)

This Court finds that the applicable law for the issues before this Court is succinctly set forth in the *Collins* decision above described and this Court will not state all of the reasoning but adopts the reasoning of Judge Berrigan in the well-written *Collins* decision.

a. Bona Fide Dispute

One of the issues that must be determined by this Court is whether or not there was a bona fide dispute. A sojourn through the docket sheet and a cursory reading of the pleadings indicates that the claims by Plaintiffs were denied and adamantly disputed by the Defendant. There were a number of intermediate decisions made by this Court that attest to the activity

among the parties herein. Significant and legitimate disputes arose and continue to be at issue.

The bottom line is that this Court finds that there is a genuine dispute between the parties.

b. Fair and Reasonable

“Although Rule 23 does not control FLSA collective actions, many courts have adopted many of Rule 23's procedures in such allegations by analogy, in an exercise of their discretion to manage the litigation of collective actions under § 216(b).” *Collins*, 568 F. Supp. 2d at 721.

Under Rule 23, a court should consider the following six factors to determine whether a settlement is fair, adequate, and reasonable:

1. the existence of fraud or collusion behind the settlement;
2. the stage of the proceedings and the amount of discovery completed;
3. the complexity, expense and likely duration of litigation;
4. the probability of plaintiffs' success on the merits;
5. the range of possible recovery; and
6. the opinions of class counsel, class representatives and absent class members.

Id. at 722 (citing *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983)).

i. The Existence of Fraud or Collusion Behind the Settlement

This Court can presume an absence of fraud or collusion but there is and has been no evidence of fraud or collusion among the parties to this settlement. This was an arms length settlement hammered out over a number of weeks by a skilled mediator.

ii. The Stage of the Proceedings and the Amount of Discovery Completed

At the time of the settlement the case was still in discovery and extensive discovery had been propounded. Neither side is entering into this settlement blind. Both sides have extensive

knowledge of the other side's claims.

iii. The Complexity, Expense and Likely Duration of Litigation

This case involves a number of Plaintiffs in three or more states. Each case has a number of legal issues and factual issues unresolved. This case will be very expensive and complex to finally resolve and settlement would be in the interest of both sides.

iv. The Probability of Plaintiffs' Success on the Merits

There are sufficient legal and factual disputes and neither side can realistically be certain about the outcome of this case.

v. The Range of Possible Recovery

There are not unlimited damages in this case. Each Plaintiff has claimed a finite amount of unpaid minutes. The recovery range is not significantly broad, and the range of possible recovery is from zero to a few hundred dollars per person.

vi. The Opinions of Class Counsel, Class Representatives and Absent Class Members

No class member objected following notice and class counsel supports the settlement.

III. Attorneys' Fees

The settlement also addresses attorneys' fees. There has been a separate Motion filed by Plaintiffs' counsel [137] requesting approval of attorneys' fees. This Order does not address Motion for Approval of Attorneys' Fees of Plaintiffs' counsel and the Court will enter a separate order on the attorney's fees.

IV. Pending Matter

Also, there was an Order entered by this Court on a Motion filed by defense counsel

[101]. The Court was reconsidering this Opinion and Order at the time the settlement was announced and this Court did not conclude the reconsideration motion. The Court restates, as stated in the hearing on this current Motion, that it would be entering a subsequent opinion reconsidering the Opinion and Order [101] and this Order of Reconsideration will be entered at a later time by this Court.

V. Time to Notify Additional Opt-Ins

Pursuant to the Settlement Agreement, Plaintiffs' counsel will solicit opt-in consents from additional potential class members. This additional opt-in period will be 60 days from the date of mailing and the mailing will occur within one week of the entry of this Order. All additional opt-ins will be included pro rata in the settlement corpus of \$300,000.

VI. Conclusion

This Court finds that the Settlement Agreement should be preliminarily approved by this Court and that notices to additional potential opt-ins should proceed forthwith. Sixty days from the date of mailing of the notices, the period for additional opt-ins will be concluded and the settlement corpus will be divided pro rata among the current plaintiffs and subsequent additional opt-ins. This Court makes no decision on the Motion for Approval of Attorneys' fees [137] and will enter its order on this Motion subsequent to this Order. Additionally, this Court reserves the right to enter the order reconsidering the Memorandum Opinion and Order [101].

SO ORDERED this the 17th day of August, 2009.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE